

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 44

**FRED Y. OYAMA AND KAIRO OYAMA,
PETITIONERS,**

ca
U.S.

STATE OF CALIFORNIA

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF CALIFORNIA**

PETITION FOR CERTIORARI FILED FEBRUARY 25, 1947.

CERTIORARI GRANTED APRIL 7, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No.

FRED. Y. OYAMA, ALSO KNOWN AS FRED YOSHIHIRO OYAMA, MINOR, KAJIRO OYAMA, ALSO KNOWN AS K. OYAMA, INDIVIDUALLY AND AS GUARDIAN OF THE PERSON AND ESTATE OF FRED YOSHIHIRO OYAMA, A MINOR, ET AL., PETITIONERS,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA.

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{fol. 1] [File endorsements omitted]

**IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE COUNTY OF
SAN DIEGO**

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

FRED Y. OYAMA, also known as FRED YOSHIHIRO OYAMA, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as Administrator of the Estate of John Mares, deceased; George Schertzer; John Kurfurst; Doe One, Doe Two and Doe Three, Defendants

PETITION TO DECLARE AN ESCHEAT TO THE STATE OF CALIFORNIA—Filed August 28, 1944

Comes now the plaintiff and petitioner and for cause of action against the defendants alleges:

FIRST CAUSE OF ACTION

I

That during all of the times mentioned in this complaint the defendants Kajiro Oyama, also known as K. Oyama, Kohide Oyama, formerly Kohide Kushino and Ririchi Kushino, were and each of them was and now is of the Japanese Race, natives of the Empire of Japan and citizens and subjects of the Empire of Japan and by reason thereof not eligible to citizenship under the laws of the United States.

II

That the defendant Fred Y. Oyama, also known as Fred Yoshihiro Oyama is of the Japanese Race and was born in [fol. 2] San Diego, California, on or about March 23, 1928.

That the defendant June Kushino is of the Japanese Race and was born in San Diego, California, on March 4, 1921.

That on March 22, 1935, the defendant Kajiro Oyama, also known as K. Oyama, was, in the Superior Court of the State of California, in and for the County of San Diego appointed guardian of the person and estate of Fred Yoshihiro Oyama, a minor, and qualified as such guardian and ever since has been and now is the guardian of the person and estate of said minor.

That the defendant June Kushino, also known as Junko Kushino, attained the age of 21 years on March 4, 1942; that during her minority the defendant Ririchi Kushino was the guardian of the person and estate of said June Kushino.

III

That there is no treaty now existing between the Government of the United States of America and the government of the Empire of Japan, by which citizens or subjects of the Empire of Japan, or natives of Japan are permitted to acquire, possess, enjoy, use, cultivate, occupy, transfer, own, or inherit lands for agricultural purposes in the State of California, or to have in whole or in part the beneficial use of agricultural land in the State of California or elsewhere in the United States, nor was there on December 9, 1920, nor has there ever been any such treaty at any of [fol. 3] the times mentioned in this complaint.

IV

That Robert W. Kenny is the duly elected, qualified and acting Attorney General of the State of California, and Thomas Whelan is the duly elected, qualified and acting District Attorney of the County of San Diego, in the State of California; and that each of them has been informed and verily believes that the property hereinafter described has escheated to the State of California through and by reason of the facts in this complaint alleged.

V

That plaintiff is informed and believes and on such information and belief alleges: That on or about the 18th day of August, 1934, defendants Kajiro Oyama, also known as K. Oyama, and Kohide Oyama, formerly Kohide Kushino, purchased that certain parcel of real property described as:

All that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho

de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166, made by Merrill on file in the County Recorder's office, lying East of the Westerly 140 feet of even width thereof, and North of the Southerly 670.15 feet of even width thereof, Excepting therefrom the Southerly 2 acres thereof. Also Excepting the [fol. 4] Northerly 40 feet of said property deeded to the City of Chula Vista for street purposes.

That on or about said 18th day of August, 1934, said real property was purported to be conveyed to defendant Fred Y. Oyama by Yonezo Oyama by a purported grant deed wherein the said Yonezo Oyama was named grantor and Fred Y. Oyama was named granteé; that on the 1st day of March, 1935, said purported grant deed was recorded at Book 380, page 275 of Official Records in the office of the County Recorder of San Diego County.

VI

That plaintiff is informed and believes and on such information and belief alleges the fact to be that the purchase price for said purported deed and conveyance was the sum of \$4,000, which was paid by said defendants Kajiro Oyama and Kohide Oyama to Yonezo Oyama.

VII

That said real property hereinbefore described is and at all times herein mentioned has been agricultural land, and at all times herein mentioned has been used for agricultural purposes.

VIII

That upon the execution and delivery of the purported deed of said lands as hereinbefore alleged, to wit, on or about August 18, 1934, said defendants Kajiro Oyama and [fol. 5] Kohide Oyama entered into the possession of said real property hereinbefore described and ever since said date have occupied and do now occupy, use, enjoy and cultivate said lands as their own and ever since said date have had in their own right the beneficial use and enjoyment of said lands for agricultural purposes, and the beneficial use of the crops grown thereon.

IX

That said purchase of said property and the purported deed taken in the name of Fred Y. Oyama is a mere subterfuge and cover for the transaction of the said defendants, and is a fraud upon the People of the State of California, and that by reason of the premises the said State of California, the plaintiff herein, is entitled to have said property declared escheated to the said State of California.

X

That the defendant Kajiro Oyama, also known as K. Oyama, at no time accounted to the said Superior Court for his receipts and expenditures as guardian of the person and estate of defendant Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; that said defendant Kajiro Oyama has at no time since said 18th day of August, 1934, filed any annual or other account or report with the Secretary of State of California as required by the provisions of section 5 of the Alien Land Law of California; that said defendant has at no time filed in the office of the County [fol. 6] Clerk of San Diego County any report or account; that said defendant has at no time served a copy of any account or report on the District Attorney of San Diego County.

That the said defendant Kajiro Oyama in conducting the business and handling the affairs of said real property has used the names "Fred Oyama" and "Y. Oyama" and has maintained checking accounts in banks under said names for the purpose of evading and violating the provisions of the Alien Land Law of California.

That all of said acts hereinbefore alleged were done by said defendants Kajiro Oyama and Kohide Oyama wilfully, knowingly and with the intent to violate the Alien Land Law of the State of California, and with the intent to prevent, evade and avoid escheat as provided therein and by means whereof said Kajiro Oyama and Kohide Oyama did unlawfully and in violation of said Alien Land Law of California obtain the possession, use, occupancy, ownership and enjoyment of said agricultural lands hereinbefore described, and ever since said date of August 18, 1934, have had, owned, possessed, used and enjoyed, cultivated and occupied said lands, and do now have, own, possess, use, cultivate, occupy and enjoy said lands for agricultural purposes.

XI

That by reason of the facts hereinbefore alleged the said real property hereinbefore described has been acquired and is now held by said defendants Kajiro Oyama [fol. 7] and Kohide Oyama in violation of that certain Statute of the State of California commonly known as the Alien Land Law, submitted by initiative, proposed to and adopted by the People of the State of California at the general election of November 2d, 1920, entitled "An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this State, providing for escheats in certain cases, prescribing the procedure therein, requiring reports of certain property holders to facilitate the enforcement of this act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith," as amended. That all of said property hereinbefore described has escheated and is escheated to the State of California.

XII

That the defendants Yonezo Oyama, George Schertzer, John Kurfurst, Doe One, Doe Two and Doe Three have or claim to have some right, title, interest and claim in or to said real property adverse to the plaintiff, the nature and amount of which is unknown to the plaintiff, and are necessary parties to the determination of this action.

XIII

That the true names or capacities, whether individual, corporate, associate or otherwise of defendants Doe One, Doe Two and Doe Three, are unknown to plaintiff who therefore [fol. 8] fore sues said defendants by such fictitious names and will ask leave to amend this complaint to show their true names and capacities when same have been ascertained.

SECOND CAUSE OF ACTION

For a second cause of action alleges:

I

Plaintiff and petitioner here refers to each and all of the allegations contained in paragraphs I to IV, inc., VII, IX, X, XI and XIII, in the First Cause of Action hereof

and adopts and re-alleges each and all of the allegations contained in said paragraphs as if the same were fully set forth herein.

II

That on December 17, 1937, the Superior Court of the State of California, in and for the County of San Diego, made and entered, in that certain proceeding entitled "In the matter of the Guardianship of the Person and Estate of June Kushino, a minor," being case No. 24654 in said court, its order confirming the sale of certain real property to Fred Y. Oyama, a minor, for the sum of \$1,500; that a certified copy of said order was recorded on December 20, 1937, in the office of the County Recorder of San Diego County at Book 725, page 320 of Official Records; that the real property purported to be sold to said defendant Fred Y. Oyama in the transaction confirmed by said order is described as follows:

[fol. 9] The Southerly 2 acres of that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166 made by Morrill, on file in the County Recorder's Office, lying East of the Westerly 140 feet, of even width thereof, and North of the Southerly 670.15 feet, of even width thereof.

That the record title to said property stands in the name of John Mares; that John Mares died intestate in the County of San Diego, State of California on or about December 20, 1943; that the defendant Lawrence W. Junker is the duly appointed, qualified and acting administrator of the estate of John Mares, deceased.

III

That plaintiff is informed and believes that the defendant Ririchi Kushino purchased said real property from said John Mares in his lifetime and that said John Mares made, executed and delivered to Ririchi Kushino a deed purporting to convey said property to the defendant June Kushino, also known as Junko Kushino.

IV

That upon the making and recording of said order confirming said purported sale from said June Kushino to said Fred Y. Oyama, said defendants Kajiro Oyama and Kohide [fol. 10] Oyama entered into the possession of said real property hereinbefore described and ever since said date have occupied and do now occupy, use, enjoy and cultivate said lands as their own and ever since said date have had in their own right the beneficial use and enjoyment of said lands for agricultural purposes, and the beneficial use of the crops grown thereon.

V

That all of said acts hereinbefore alleged were done by said defendants Kajiro Oyama and Kohide Oyama wilfully, knowingly and with the intent to violate the Alien Land Law of the State of California, and with the intent to prevent, evade and avoid escheat as provided therein and by means whereof said Kajiro Oyama and Kohide Oyama did unlawfully and in violation of said Alien Land Law of California obtain the possession, use, occupancy, ownership and enjoyment of said agricultural lands hereinbefore described, and ever since said date of December 17, 1937, have had, owned, possessed, used and enjoyed, cultivated and occupied said lands, and do now have, own, possess, use, cultivate, occupy and enjoy said lands for agricultural purposes.

VI

That the defendants Ririchi Kushino, June Kushino, also known as Junko Kushino, Yonezo Oyama, Lawrence W. Junker, as administrator of the Estate of John Marcs, deceased, George Schertzer, John Kurfurst, Doe One, Doe [fo. 11] Two and Doe Three have or claim to have some right, title, interest and claim in or to said real property adverse to the plaintiff, the nature and amount of which is unknown to the plaintiff, and are necessary parties to the determination of this action.

Wherefore, plaintiff prays that it be adjudged and decreed that said real property described in plaintiff and petitioner's First Cause of Action has escheated to the State of California as of the date of August 18, 1934, and is now the property of the State of California; and that it be adjudged

and decreed that the said real property described in plaintiff and petitioner's Second Cause of Action has escheated to the State of California as of the date of December 17, 1937, and is now the property of the State of California, and that the defendants Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama; individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Lawrence W. Junker, as Administrator of the Estate of John Mares, deceased, George Schertzer; John Kurfurst; Doe One, Doe Two and Doe Three, be forever barred from asserting any claim, right, or title in or to said premises or any part thereof as against the State of California, and for such other and further relief as to the Court may seem meet and just in the premises.

[fol. 12] Robert W. Kenny, Attorney General of the State of California; Thomas Whelan, District Attorney of the County of San Diego, State of California. By Duane J. Carnes, Deputy District Attorney. Attorneys for Plaintiff.

[fol. 13] IN SUPERIOR COURT OF SAN DIEGO COUNTY

No. 121200

DEFAULT—August 23, 1945

In this Action, the Defendant George Schertzer, John Kurfurst and Lawrence W. Junker as Administrator of the Estate of John Mares, deceased, having been regularly served with process, and having failed to appear and answer to Plaintiff's complaint on file herein, and the time allowed by law for answering having expired, the default of said defendant in the premises is hereby duly entered according to law.

Attest my hand and the seal of the Superior Court,
this 23rd day of August, 1945. J. B. McLees,
Clerk. By R. B. Seifert, Deputy. (Seal.)

[fol. 14] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND
FOR THE COUNTY OF SAN DIEGO

[Title omitted]

AFFIDAVIT OF ROBERT W. KENNY—Filed August 28, 1944

STATE OF CALIFORNIA,

County of Los Angeles, ss:

Robert W. Kenny, being first duly sworn deposes and says:

That he is the duly elected, qualified and acting Attorney General of the State of California;

That defendants herein Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a Minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino and Yonezo Oyama [fol. 15] are not nor is either of said named persons, nor is the address of either of them, known to affiant.

Robert W. Kenny, Affiant.

Subscribed and sworn to before me this 9th day of August, 1944. Kathryn Buckman, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 16] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SAN DIEGO

[Title omitted]

AFFIDAVIT OF HARRY B. RILEY—Filed August 28, 1944

STATE OF CALIFORNIA,

County of Sacramento, ss:

Harry B. Riley, being first duly sworn deposes and says:

That he is the duly elected, qualified and acting State Controller of the State of California:

That defendants herein, Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a Minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino and Yonezo Oyama are not, nor is either of said named persons, nor is [fol. 17] the address of either of said named persons, known to affiant.

That said named persons have not, nor has either of them filed in the Office of the State Controller of the State of California any written request for service of process, nor have said named persons nor has either of them filed in the Office of said State Controller any written statement showing the name and address of such person.

Harry B. Riley, Affiant.

Subscribed and sworn to before me this 22 day of August, 1944. Roy Hann, Notary Public in and for the County of Sacramento, State of California.
My Commission Expires March 17, 1947. (Seal.)

[fol. 18] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

ORDER FOR PUBLICATION--Filed August 28, 1944

It satisfactorily appearing from the petition and complaint filed herein on behalf of plaintiff that said action relates to and the subject of the same is real property within this State, in which the defendants have or claim an interest and in which the relief sought consists in part in excluding said defendants from any interest therein; and

It further appearing from the affidavit of Eugene D. Allen filed herein that:

That defendants Fred Y. Oyama, also known as Fred Yoshihiro Oyama, Kajiro Oyama, also known as K. Oyama, and Kohide Oyama, formerly Kohide Kushino, have de-

parted from and reside out of the State of California, and at 383 North 4 West, Payson, Utah;

[fol. 19] That the defendant June Kushino, also known as Junko Kushino, has departed from and resides out of the State of California, and at 4717 Greenwood Avenue, Chicago, Illinois:

That defendants Ririchi Kushino and Yonezo Oyama have departed from and reside out of the State of California, their places of residence being unknown; and

It further appearing that there has not been filed on behalf of said defendants in said San Diego County, where said action was brought and is pending, the certificate of residence provided for in section 1163 of the Civil Code of the State of California; and

It further appearing that an order, as required by Section 1268 of the Code of Civil Procedure, was duly made requiring all of the defendants and all persons interested in or claiming to have an interest in the real property or estate in said petition and complaint described, to appear and show cause, if any they have, at the time and place designated in said petition and complaint why it should not be adjudged that said real property or estate has escheated and is escheated to and why the title thereto should not vest in the State of California, and that personal service cannot be made within the State of California upon the above named defendants who have departed from, and reside without the State of California; and

It further appearing that The Daily Transcript is a newspaper of general circulation printed and published [fol. 20] daily except Sundays in the City of San Diego, County of San Diego, State of California, and is the newspaper most likely to give notice of this action to said defendants, and to all persons interested in or who claim an interest in said real property or estate;

It Is Hereby Ordered that service of said Order to Show Cause upon said defendants and all persons interested in or who claim an interest in said real property or estate be made by publication of said order to show cause in The Daily Transcript, which said newspaper is hereby designated as most likely to give notice of this action to said defendants and to all persons interested in or who claim an interest in or to said real property or estate, said publication to be made once each calendar week successively for

two months, the last publication to be at least ten days prior to the day fixed in said order for showing cause, and

It Is Further Ordered that a copy of said Order to Show Cause together with a copy of the petition and complaint in this action be deposited in the post office, postage prepaid, directed to the persons to be served, as follows:

Fred Y. Oyama, 383 North 4 West, Payson, Utah;
 [fol. 21] Kajiro Oyama, 383 North 4 West, Payson, Utah; Kohide Oyama, 383 North 4 West, Payson, Utah; June, Kushino, 4717 Greenwood Avenue, Chicago, Illinois.

Dated this 28 day of August, 1944.

Jacob Weinberger, Judge of the Superior Court.

[fol. 22] [File endorsement omitted]

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
 FOR THE COUNTY OF SAN DIEGO**

[Title omitted]

ORDER TO SHOW CAUSE—Filed August 28, 1944

It satisfactorily appearing from the petition and complaint herein, filed by Robert W. Kenny, Attorney General, and Thomas Whelan, District Attorney of the County of San Diego, on behalf of The People of the State of California, as plaintiff, against Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as administrator of the Estate of John Mares, deceased; George Schertzer; John Kurfurst; Doe One, Doe Two and Doe Three, as Defendants;

That this action relates to and that the subject of this [fol. 23] action is that certain real property situate, lying and being in the County of San Diego, State of California, and particularly described as follows, to wit:

Parcel One:

All that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho

de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166, made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet of even width thereof, and North of the Southerly 670.15 feet of even width thereof, Excepting therefrom the Southerly 2 acres thereof. Also Excepting the Northerly 40 feet of said property deeded to the City of Chula Vista for street purposes.

Parcel Two:

The Southerly 2 acres of that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166 made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet, of even width thereof, and North of [fol. 24] the Southerly 670.15 feet, of even width thereof.

And it further appearing from said petition and complaint that plaintiff claims and alleges that by reason of the facts and circumstances alleged in said petition and complaint that said real property did escheat and has escheated and is escheated to the State of California;

And it further appearing from said petition and complaint that defendants Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as administrator of the Estate of John Mares, deceased; George Schertzer; John Kürfürst; Doe One; Doe Two and Doe Three have or claim to have some right, title, interest and claim in and to said real property adverse to the plaintiff which right, title, interest or claim is alleged by plaintiff to be without right and subject and subordinate to the right and claim of plaintiff herein;

And it further appearing that this action was commenced by filing said petition and complaint under and pursuant to the provisions of Part III, Title VIII of the Code of Civil Procedure, and the "Alien Land Law;" as amended;

And good cause appearing,
[fol. 25] It Is Therefore Ordered:

That said above named defendants, Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as administrator of the Estate of John Marcs, deceased; George Schertzer; John Kurfurst; Doe One; Doe Two and Doe Three, and all persons interested in or claiming an interest in said real property or estate appear and show cause, if any they have, on the 6 day of November, 1944, at the hour of 10 o'clock A. M. of said day in Department No. 6 of the Superior Court of the State of California, in and for the County of San Diego, in the court room of said Department No. 6, in the Courthouse, in the City of San Diego, County of San Diego, State of California, why it should not be adjudged that said real property has escheated to and why the title to said real property should not vest in the State of California as prayed for in said petition and complaint.

It is further ordered that this order be published at least once a week for two successive months in The Daily Transcript, a newspaper of general circulation, printed and published in the County of San Diego, State of California, the last of such publications to be at least ten days prior [fol. 26] to the 6 day of November 1944.

Dated: Aug. 28, 1944.

Jacob Weinberger, Judge of the Superior Court.

[fol. 27] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SAN DIEGO

[Title omitted]

AFFIDAVIT OF SERVICE OF ORDER TO SHOW CAUSE—Filed
August 29, 1944

1013a, C. C. P.

STATE OF CALIFORNIA,
County of San Diego, ss:

Edna M. Zinn, being first duly sworn deposes and says:

That affiant is a citizen of the United States and a resident of the County of San Diego; that affiant is over the age of eighteen years and is not a party to the within and above entitled action.

That affiant's business address is: Room 302, Civic Center Building, San Diego 1, California;

That on the 28th day of August, 1944, affiant served the Order To Show Cause and Petition To Declare An Escheat To The State Of California on file herein on the defendant Fred Y. Oyama in said action by placing a true copy thereof in an envelope addressed to said defendant as follows:

[fol. 28] Fred Y. Oyama,
383 North 4 West,
Payson, Utah;

That on the 28th day of August, 1944, affiant served the Order To Show Cause and Petition To Declare An Escheat To The State Of California on file herein on the defendant Kajiro Oyama in said action by placing a true copy thereof in an envelope addressed to said defendant as follows:

Kajiro Oyama,
383 North 4 West,
Payson, Utah;

That on the 28th day of August, 1944, affiant served the Order To Show Cause and Petition To Declare An Escheat To The State Of California on file herein, on the defendant Kohide Oyama, in said action, by placing a true copy

thereof in an envelope addressed to said defendant as follows:

Kohide Oyama,
383 North 4 West,
Payson, Utah;

That on the 28th day of August, 1944, affiant served the Order To Show Cause and Petition To Declare An Escheat To The State Of California on file herein, on the defendant, June Kushino, in said action by placing a true copy thereof in an envelope addressed to said defendant as follows:

June Kushino,
4717 Greenwood Avenue,
Chicago, Illinois,

[fol. 29] and then sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at San Diego, California, where is located the office of the attorney for the party by and for whom said service was made.

That there is a regular daily communication of United States mail between the place of mailing and the places so addressed.

Edna M. Zinn.

Subscribed and Sworn to before me this 28th day of August, 1944, Marcia Kerns, Notary Public in and for the County of San Diego, State of California. My commission expires January 16, 1945.
(Seal.)

[fol. 30] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SAN DIEGO

[Title omitted]

NOTICE OF APPEARANCE—Filed November 6, 1944

To the Plaintiff Above-Named, and Robert W. Kenny,
Thomas Whelan, and Duane J. Carnes, Its Attorneys.

GENTLEMEN:

Please take notice that defendants, Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama, Individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kashino; Ririchi Kashino, June Kashino, also known as Junko Kashino; Yonezo Oyama; hereby appear in the above-entitled action by the undersigned, their attorneys.

Dated November 3rd, 1944.

A. L. Wirin and J. B. Tietz, by J. B. Tietz, Attorneys
for Defendants.

[fol. 31] IN SUPERIOR COURT OF SAN DIEGO COUNTY

AFFIDAVIT OF SERVICE OF NOTICE OF APPEARANCE

(C. C. P. 1013a)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

A. Lloyd, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business address is 257 South Spring Street, Los Angeles 12, California. That on the 2nd day of November, 1944, affiant served the within Notice Of Appearance on the Attorney for Plaintiff in said action by placing a true copy thereof in an envelope addressed to the attorney of record of said Plaintiff, at the business/residence address

of said attorney, as follows: "Duane J. Carnes, Deputy, Office of District Attorney, 302 Civic Center, San Diego, California" and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Postoffice at Los Angeles, California, where is located the office of the attorney for the person by and for whom, said service was made.

That there is delivery service by United States mail at the place so addressed and/or there is a regular communication by mail between the place of mailing and the place so addressed.

A. Lloyd.

[fol. 32] Subscribed and sworn to before me this 2nd day of November, 1944. J. B. Tiefz, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 33] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

No. 121200

[Title omitted]

DEMURRER—FILED February 17, 1945

The defendants, Fred Y. Oyama, Kajiro Oyama, Kohide Oyama, Ririchi Kushino; June Kushino and Yonezo Oyama, demur to the Complaint and to both causes of action in said Complaint upon the following grounds:

I

Said complaint does not state facts sufficient to constitute a cause of action.

H

The Court has no jurisdiction over the persons of the defendants, or the subject matter of the action.

III

The California Alien Land Law is unconstitutional in that, under the Constitution of the United States, it de-

prives the defendants of liberty and property, and of the equal protection of the laws; under the XIVth Amendment to the Constitution of the United States; and abridges the [fol. 34] rights of the defendants under the Constitution of the State of California to due process of law under Article 1, Section 13 of the Constitution of the State of California, and of privileges guaranteed by Article 1, Section 21 of said Constitution.

IV

The cause of action against the defendants is barred by the Statute of Limitations.

A. L. Wirin and J. B. Tietz, by A. L. Wirin, Attorneys for Defendants.

CERTIFICATION

I hereby certify that the above Demurrer is filed in good faith and without intent to delay and that in my opinion it is well taken.

A. L. Wirin.

[fol. 35] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

No. 121200

[Title omitted]

POINT AND AUTHORITIES IN SUPPORT OF DEMURRER

I

A suit for escheat of property under the California Alien Land Law is one for a forfeiture or penalty and is barred by the One Year Statute of Limitations.

C.C.P. Sec. 340

People v. Grant, 52 Cal. App. (2d) 794

(a) A suit, although involving an interest in real property may be governed by the One Year Statute of Limitations.

County of Los Angeles v. Ballerino, 99 Cal. 593

(b) Sec. 340, C.C.P. applies only in cases involving adverse possessions.

National Soda Products Co. v. City of Los Angeles,
23 Cal. (2d) 204

People v. Center, 66 Cal. 551.

Cf. Hansen v. Vallejo Electric Light & Power Co.,
182 Cal. 492, for definition of "penalty".

[fol. 36] *Cf. People v. Broad*, 216 Cal. 1 and *Leman v. Los Angeles*

Terminal R. Co., 38 Cal. App. 659, for a definition of "forfeiture".

II

In any event the ten year Statute applies.

Sec. 315 C.C.P.

III

The California Alien Land Law is unconstitutional in that; under the Constitution of the United States, it deprives the defendants of liberty and property, and of the equal protection of the laws, under the XIVth Amendment to the Constitution of the United States; and abridges the rights of the defendants under the Constitution of the State of California to due process of law under Article 1, Section 13 of the Constitution of the State of California, and of privileges guaranteed by Article 1, Section 21 of said Constitution.

Discrimination because of race is constitutionally justified only when required by pressing public necessity, under circumstances of direct emergency and peril. No such necessity warrants the enforcement of said Statute against the defendants. The California Alien Land Law was conceived in race prejudice and as enforced against the defendants has the effect of penalizing the defendants solely because of race.

[fol. 37] *Korematsu v. United States*, (United States Supreme Court), 89 L. Ed. (Adv. Op.) 202.

Ex Parte Endo, (United States Supreme Court), 89 L. Ed. (Adv. Op.) 219.

Ex Parte Kawato, 317 U. S. 69-73, 87 L. Ed. 58-61.

Yu Cong Eng. v. Trinidad, 271 U. S. 500, 70 L. Ed. 1059.

Boyd v. Frankfort, 117 Ky. 199.

Opinion of Justices, 207 Mass. 601.

Yick Wo v. Hopkins, 118 U. S. 356-369, 30 L. Ed. 220.

Cf. Estate of Yano, 215 Cal. 166 and *People v. Fujita*, 215 Cal. 166.

Although the Supreme Court has upheld the California Alien Land Law in *Terrace v. Thompson* (1923) 263 U. S.

197, 68 L. Ed. 225, and in other companion cases over twenty years ago, many living waters have run under the bridges of the Constitution; and these twenty year old cases are not controlling, so far as the application and enforcement of the Statute, as against the particular defendants herein, and in 1945, are concerned.

A statute constitutional at one time and under certain sets of circumstances may be invalid at a later time and under different circumstances.

[fol. 38] Cf. *Chastleton Corp. v. Sinclair*, 264 U. S. 543, 547, 68 L. Ed. 841, 843;

Block v. Hirsch, 256 U. S. 135, 154, 65 L. Ed. 865, cited with approval in *Korematsu v. United States*, supra at 89 L. Ed. (2d Op.) 202, 205.

IV

None of the defendants are aliens, ineligible for citizenship; hence the California Alien Land Law is not applicable to any of them. The Federal Naturalization Statute as amended permits all of the defendants to become naturalized upon honorable service in the land or naval forces of the United States during the present war.

Title 8 U.S.C., Sec. 1001, Nationality Act of 1940 as amended. (2 Federal Code Annotated, Supplement p. 280)

Respectfully submitted,

A. L. Wirin and J. B. Tietz, Hugh E. Macbeth and Hugh E. Macbeth, Jr., by A. L. Wirin, Attorneys for Demurring Defendants.

[fol. 39] AFFIDAVIT OF SERVICE OF DEMURRER
(C.C.P. 1013A)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Dixie Mitchell, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business address is 257 S. Spring St., Los Angeles 12. That on the 16th day of February 1945, affiant served the within Demurrer on the Attorney for

plaintiff in said action by placing a true copy thereof in an envelope addressed to the attorney of record for said Demurrer, at the business/residence address of said attorney, as follows: "Duane J. Carnes, Deputy, Office of District Attorney, 302 Civic Center, San Diego, California." and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Postoffice at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or/and there is a regular communication by mail between the place of mailing and the place so addressed.

Dixie Mitchell.

[fol. 40] Subscribed and sworn to before me this
16th day of February, 1945. —, Notary Public
in and for the County of Los Angeles, State of
California.

[fol. 41] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SAN DIEGO

[Title omitted]

DEFENDANTS' SUPPLEMENTAL MEMORANDUM ON DEMURRER—
Filed March 2, 1945

The complaint fails to state a cause of action in that it recites only that some of the defendants are aliens of the Japanese race and not eligible to become citizens because thereof. Under the naturalization law as amended they are not now ineligible for citizenship solely because of race.

Terrace v. Thompson, 263 U. S. 197, 68 L. Ed. 255 and *Porterfield v. Webb*, 263 U. S. 225, 86 L. Ed. 278, are not binding because they rest upon a provision of the Naturalization Act, then, but not now, in force. In 1923, the Naturalization Act (Title 8, U. S. C., Sec. 359) limited naturalization to "free white persons and persons and aliens of African nativity." In 1942, the Naturalization Act was amended (Title 8, U. S. C., Sec. 1001) so that notwithstanding the express racial limitations to naturalization thereto-

[fol. 42] fore provided for (Title 8 U. S. C., Sec. 703), and further notwithstanding any limitations to naturalization upon alien enemies (8 U. S. C., Sec. 726), "any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States may be naturalized". And such persons are expressly exempted from the requirement of paying a fee, from the five year period of residence and from being able to speak the English language—conditions required of all other persons.

The history of the Naturalization Act discloses a growing purpose on the part of Congress, first to limit, and then to eliminate, race as a qualification for, or condition precedent to citizenship.

Thus, prior to the Civil War, only "free white persons" were admitted to citizenship. After the Civil War, Negroes were eligible. When the Naturalization Act was incorporated in the Nationality Act of 1940, American Indians who had been theretofore excluded were included, as were Filipinos having honorable service in the United States Army. (8 U. S. C. 703). By a 1943 amendment to Sec. 703, persons of Chinese descent are eligible to citizenship. (Act of December 17, 1943, Sec. 3; C. 344, 57 Stat. 601).

It seems therefore that race alone is now no longer an insurmountable obstacle to or a complete prohibition against naturalization. To be sure, before a member of the Japanese race may be admitted to citizenship, he must first [fol. 43] serve in the armed forces during this war; he is, however, as already indicated, exempt from requirements such as residence, payment of fee, speaking the English language, imposed upon persons not having thus served in the armed forces.

Furthermore, no person is entitled to, or "eligible" to citizenship (except only if he has served in the armed forces) unless he meets the residence and character requirements (8 U. S. C., Sec. 707) and files his declaration of intention in good faith (8 U. S. C. Sec. 704). Moreover, certain other persons are not eligible for citizenship if they are deserters (8 U. S. C. Sec. 706) or if they have certain undesirable beliefs, as for example, in anarchism, sabotage or violence, (8 U. S. C. Sec. 705). None of these disqualifications is alleged in the Complaint against any of the defendants.

Certain is it that persons of the Japanese race by virtue of Sec. 1001, are eligible for naturalization; the very heading of that Section reads: "Persons with honorable service in armed forces eligible for naturalization."

It is to be noted that the major basis for the Supreme Court's sustaining the constitutionality of the California Alien Land Law in 1923 was that the State classification was reasonable because based upon a federal classification which was in the discretion and was reasonable. Thus in *Terrace v. Thompson* at p. 220 (68 L. Ed. 276) the Court [fol. 44] stated: (Italics supplied)

"Congress is not trammeled, and it may grant or withhold the privilege of naturalization upon any grounds or without any reason, as it sees fit. But it is not to be supposed that its acts defining eligibility are arbitrary or unsupported by reasonable considerations of public policy. The state properly may assume that the considerations upon which Congress made such classification are substantial and reasonable."

Since eligibility to naturalization has been now substantially altered by Congress, the classification in the California Alien Land Law, modeled after a former and now repealed classification, must fall. In any event, the racial classification in the California Alien Land Law does not apply to any of the defendants since each of them is now eligible for citizenship, their race and place of birth to the contrary notwithstanding.

II.

The California Alien Land Law is unconstitutional in that it discriminates against persons solely because of race.

1. Present Constitutional Test Applicable To Classification Because of Race.

[fol. 45] The present constitutional test is that treatment of a person because of membership in a particular racial group is constitutionally warrantable only when required by "pressing public necessity", *Korematsu v. United States*, 89 L. Ed. (Adv. Op.) 202, 203. Racial discrimination is justified only "under circumstances of direct emergency and peril", *Korematsu v. United States*, supra, at p. 205.

For, as the Supreme Court has declared, "Loyalty is a matter of the heart and mind, not of race, creed, or color",

Ex parte Endo, 89 L. Ed. (Adv. Op.) 219, 220. The reason for the ruling, particularly as applicable to persons of Japanese descent is thus stated by Justice Douglas for the Supreme Court in the *Endo* case, quoting President Roosevelt:

"Americans of Japanese ancestry, like those of many other ancestries, have shown that they can, and want to, accept our institutions and work loyally with the rest of us, making their own valuable contribution to the national wealth and well-being. In vindication of the very ideals for which we are fighting this war it is important to us to maintain a high standard of fair, considerate, and equal treatment for the people of this minority as of all other minorities."

The *Endo* and *Korematsu* decisions are the natural heirs to the judicial philosophy expounded by Justice Black for the Supreme Court in *Ex parte Kawata*, 317 U. S. 69, 73; 87 [fol. 46] L. Ed. 58. In upholding the right of a person of Japanese descent, normally an "alien enemy" to seek justice in the court of the United States, the Court took the view that:

"'Alien enemy' as applied to this petitioner is at present but the legal definition of his status because he was born in Japan with which we are at war. Nothing in this record indicates that we cannot assume that he came to America for any purpose different from that which prompted millions of others to seek our shores—a chance to make his home and work in a free country, governed by just laws, which promise equal protection to all who abide by them."

Although dissenting in result, Justice Murphy best expressed the views of the Supreme Court upon the constitutionality of racial discrimination when he concluded his Opinion in the *Korematsu* case thus (*Korematsu v. United States*, 89 L. Ed. (Adv. Op.) 202, 216):

"Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life." It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin

in some way by blood or culture to a foreign land. Yet [fol. 47] they are primarily and necessarily a part of the new and distant civilization of the United States. They must accordingly be treated at all times as the heirs of the American experiment and as entitled to all the rights and freedoms guaranteed by the Constitution."

While speaking in dissent in the *Korematsu* case, Justice Murphy was merely expressing the view of the Court in *Schneiderman v. United States*, 320 U. S. 118, 120, 87 L. Ed. 1796, 1799, upon the rights of minority groups:

"We are directly concerned with the right of this petitioner . . . but we should not overlook the fact that we are a heterogeneous people.

"In some of our larger cities a majority of the school children are the offspring of parents only one generation, if that far, removed from the steerage of the immigrant ship, children of those who sought refuge in the new world from the cruelty and oppression of the old."

Compare Justice Murphy's noteworthy concurring Opinion in *Hirabayashi v. United States*, 320 U. S. 87, 111, 87 L. Ed. 1774, 1791, in which Justice Murphy expressed the view that ordinarily restrictions "based upon the accident of race or ancestry" runs in defiance of constitutional guarantees. Deprivation of liberty because of a particular [fol. 48] racial inheritance, according to Justice Murphy:

" . . . bears a melancholy resemblance to the treatment accorded to members of the Jewish race in Germany and in other parts of Europe. The result is the creation in this country of two classes of citizens for the purposes of a critical and perilous hour—to sanction discrimination between groups of United States citizens on the basis of ancestry."

In manifest contradistinction to the present constitutional test and approach to discrimination because of race, in 1923 the Supreme Court applied a different standard. In *Porterfield v. Webb*, 263 U. S. 225, 68 L. Ed. 278, infra., the Supreme Court then applied the rule that State legislation containing classification would be upheld if there was

any rational basis for the classification, whether such classification applied to racial groups, or conventional commercial transactions.

2. Past and Present Constitutional Tests, Applied by the Supreme Court to State Legislative Classifying Because of Race.

In *Porterfield v. Webb*, supra, at p. 281, the Court in upholding the California Alien Land Law, applied in effect, the "rational basis" test; instead of the "clear and present danger test" to be discussed below. Thus the Court said:

[fol. 49] "In the case now before us the prohibited class includes ineligible aliens only. In the matter of classification, the states have wide discretion. Each has its own problems, depending on circumstances existing there. It is not always practical or desirable that legislation shall be the same in different states. We cannot say that the failure of the California legislature to extend the prohibited class so as to include eligible aliens who have failed to declare their intentions to become citizens of the United States was arbitrary or unreasonable."

While the standard applied by the Supreme Court in *Porterfield v. Webb*, supra, still applies to "commercial transactions", where the great personal liberties guaranteed by the Bill of Rights and the Fourteenth Amendment are at issue, no such presumption of constitutionality, or assumption that facts exist warranting classification because of race, now attends state legislative fiat against a group of persons solely because of race, color or ancestry. Indeed the constitutional presumption is to the contrary; and in any event, they come before the Court denuded of the presumption of constitutionality, to be appraised by the courts through the exercise on the part of the courts of their *independent judgment*.

Thus on the one hand, in *Korematsu v. United States*, [fol. 50] supra, 89 L. Ed. (Adv. Op.) 202, 203, the Court began its Opinion by stating:

"It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all *all* such restrictions are unconstitutional. It

is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can."

And on the other hand, in a comparable case, in *Thomas v. Collins*, 89 L. Ed. (Adv. Op.) 340, 348, the independent judgment which the courts will give to such state legislature is thus stated:

"That judgment in the first instance is for the legislative body. But in our system where the line can constitutionally be placed presents a question this Court cannot escape answering independently, whatever the legislative judgment, in the light of our constitutional tradition."

In other words, the presumption of the constitutionality and the presumption of the reasonableness of classification, are balanced and offset by the preferred place accorded such great freedoms including freedom from discrimination solely because of race.

[fol. 51] The Supreme Court itself said in *Thomas v. Collins*, supra, at p. 347:

"The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." (Italics supplied.)

The Court expressly rejected the "rational basis" test for such state legislation. It summarized the contention of the State of Texas in the case, thus: (at p. 346)

"In short, the State would apply a "rational basis" test, appellant one requiring a showing of "clear and present danger."

In a footnote the Court made the following reference to the claim of the State, rejected by the Court, a claim strik-

ingly similar to one sustained by the Court, in *Porterfield v. Webb*. The Tootnote reads:

"According to the brief, "The analogy is that interstate commerce like freedom of religion, speech, and press is protected from undue burdens imposed by the States, yet the States still have authority to impose [fol. 52] regulations which are reasonable "in relation to the subject."

These latest rulings by the Supreme Court rejecting the standard applied by it in *Porterfield v. Webb*; 263 U. S. 225, 86 L. ed. 278, supra, are merely in line with a number of recent decisions especially concerned in the protection of minority racial and political groups from discrimination.

The pioneer statement enunciating this new and different standard was made for the Court by Chief Justice Stone in *United States v. Caroline Produce Co.*, 304 U. S. 144, 152, 82 L. ed. 1234, 1241. (Cited with approval in *Thomas v. Collins* supra at p. 345.) Thus the Court first drew the distinction between legislative judgment involving "ordinary commercial transactions" and such judgment affecting civil rights. Said the Court:

"Even in the absence of such aids the existence of facts supporting the legislative judgment is to be presumed, for regulatory legislation affecting ordinary commercial transactions is not to be pronounced unconstitutional unless in the light of the facts made known or generally assumed it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators."

With respect to legislation affecting civil rights the Court expressed the view that:

[fol. 53] "There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth."

In the footnote, the Court took particular note of legislation aimed at particular religious, national and racial minorities and left the matter with this inquiry:

"... whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."

And so, in *Schneidér v. Irrington*, 308 U. S. 161, 84 L. ed. 165 the rule is thus expressed:

"In every case, therefore, where legislative abridgment of the right is asserted, the courts should be astute to examine the effect of the challenged legislation."

"Mere legislative preferences, or beliefs respecting matters of public convenience may [fol. 54] well support regulations directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the right."

And in *Thoruhill v. Alabama*, 310 U. S. 88, 95, 84 L. ed. 1093, 1099, the Court definitely determined that:

"Mere legislative preference for one rather than another means for combating substantive evils, therefore, may well prove an inadequate (96) foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions. It is imperative that when the effective exercise of these rights is claimed to be abridged, the courts should 'weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations."

[fol. 55] Unaccompanied by presumption of constitutionality, assumptions that the legislation is supported by facts

warranting such classification, inference that it has a "rational basis," weighed and appraised by the Courts exercising an independent judgment, the test for legislation aimed at, affecting only a particular race, is the "clear and present danger."

Although applied originally to "free speech cases" the rule has now been equally extended to situations involving racial discrimination. Thus in *Korematsu v. United States*, supra at p. 205, military orders aimed against persons of Japanese descent were upheld only because they were made at "a critical hour" in our Nation's history; and such treatment was upheld only because it seemed warranted because of "circumstances of direct emergency and peril." Justice Murphy explained the formula more fully. To him, racial treatment was constitutionally justifiable only in the face of public danger, that is "imminent and impending", *Korematsu v. United States*, supra, at p. 212.

The rule is best expounded in *Thomas v. Collins*, 89 L. ed. (Adv. Op.) supra, 340, 349. It is to the effect that an intrusion upon any of the great traditional American freedoms—not the least of which is the right to be free from discrimination because of race—is permitted "only if grave and impending public danger requires this."

Again in the *Thomas* case, the Court explained (at p. [fol. 56] 346) by quoting from *West Virginia State Bd. of Educ. v. Barnette*, 319 U. S. 624, 639, 87-L. Ed. 1628, 1638, that these great American rights are "susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect."

No showing has, or can be made by the Plaintiff that the enforcement of the Alien Land Law against the defendants or at all, is constitutionally justified because of a clear and present danger to the State of California or to the United States.

III

Although the Statute Is Upheld as Valid at One Time and Under Certain Circumstances It May Be Adjudged Unconstitutional at Another Time and Under a Different Set of Circumstances.

Thus in *Nashville, C. & St. L. R. Co., v. Walters*, 294 U. S. 405, 79 L. ed. 949, the Supreme Court speaking,

through Justice Brandeis laid down the following rule (at p. 415):

"A statute valid as to one set of facts may be invalid as to another. A statute valid when enacted may become invalid by change in the conditions to which it is applied."

The Court rejected the contention of the Attorneys for the State of Tennessee, that the Courts could not:

[fol. 57] "... 'any more' consider 'whether the provisions of the act in question have been rendered burdensome or unreasonable by changed economic and transportation conditions', than it could consider changed mental attitudes to determine the constitutionality and enforceability of a statute."

The Supreme Court said that "a rule to the contrary is settled by the decisions of this Court."

The following three changes in circumstances have taken place since *Porterfield v. Webb*, 263 U. S. 225, 86 L. ed. 278:

1. Congress has changed the provisions of the Naturalization Act so as to no longer *to* prescribe naturalization on the part of persons of Japanese descent solely and exclusively on account of race.

2. The Supreme Court has changed the rule affecting judicial standards applicable to the California Alien Land Law.

3. History and the Supreme Court have gone forward in the recognition that "racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life."

Justice Murphy concurring in *Hirabayashi v. United States*, 320 U. S. 81, 111, 87 L. ed. 1774, 1791:

[fol. 58] "Distinctions based on color and ancestry are utterly inconsistent with our traditions and ideals. They are at variance with the principles for which we are now waging war. We cannot close our eyes to the fact that for centuries the Old World has been torn by racial and religious conflicts and has suffered the worst kind of anguish because of inequality of treatment for different groups. There was one law

for one and a different law for another. Nothing is written more firmly into our law than the compact of the Plymouth voyagers to have just and equal laws. To say that any group cannot be assimilated is to admit that the Great American experiment has failed, that our way of life has failed when confronted with the normal attachment of certain groups to the lands of their forefathers. As a nation we embrace many groups, some of them among the oldest settlements in our midst, which have isolated themselves for religious and cultural reasons.

"Today is the first time, so far as I am aware, that we have sustained a substantial restriction of the personal liberty of citizens of the United States based upon the accident of race or ancestry. Under the curfew order here challenged no less than 70,000 [fol. 59] American citizens have been placed under a special ban and deprived of their liberty because of their particular racial inheritance. In this sense it bears a melancholy resemblance to the treatment accorded to members of the Jewish race in Germany and in other parts of Europe. The result is the creation in this country of two classes of citizens for the purposes of a critical and perilous hour—to sanction discrimination between groups of United States citizens on the basis of ancestry."

IV.

The Cause of Action Is Barred by the Statute of Limitations. Memorandum on the Application of the Statutes of Limitation to an Action by the State of California to Declare an Escheat of Real Property Under the Alien Land Law (Gen. Laws 260-261)

1. The action prosecuted by the State is an "action" within the contemplation of the Code of Civil Procedure of the State of California, and more particularly within the contemplation of Part II, Title II thereof re time of commencing civil actions.

CCP 22, 363.

2. The action herein brought by the State, being based upon statutes (Gen. Laws Sec. 260 and 261, Acts of 1913, [fol. 60] amend. 1920, 1923, 1927 and 1943) which statutes

do not provide a limitation as to the time within which an action based thereon is to be commenced, the appropriate provisions of Title II of Part II of the Code of Civil Procedure control such time limitations.

CCP 312

3. The cause of action to enforce the escheat accrues as of the date of the acquisition of property in violation of the terms of the Alien Land Law, and is not a continuing cause of action.

A. The sole ground provided in the statutes for an action for the escheat proceedings is the improper acquisition of the property involved, and not the use of the land by an ineligible alien.

Act 260, Sec. 5; Act 261, Secs. 7 and 9.

B. There are other remedies for the unlawful use and occupancy, etc. of the land.

Act 261, Sec. 10b (injunction) and Sec. 10c (declaratory relief).

relief)

There are also criminal penalties provided.

Act 261, Sec. 10a.

4. Even if it be determined that the above-mentioned code provisions did not comprehend within their limitations, an action by the State for escheat under the Alien [fol.61] Land Law, there are other considerations of policy and derived from the Code of Civil Procedure which would urge some such limitation upon the time within which the State should commence action.

A. The all inclusiveness of Part II, Title II of the Code of Civil Procedure referring to the time of commencement of actions and in particular Sec. 343 of the CCP indicate that all causes of action are limited in time of commencement unless it is expressly provided otherwise.

CCP 343 (omnibus section):

County and City of San Francisco v. Luning, 73 Cal. 610.

B. The policy is similar with regard to actions by the State (CCP 345) for even more heinous offenses than the one at hand.

Cal. Pen. Code Secs. 799, 800, 801.

there being a three year limitation on the prosecution of the crime of treason.

C. Such a right of action in the State without limitation as to time of enforcement would result in insecurity of land titles in subsequent purchasers and encumbrancers, and in general would be oppressive.

City of San Diego v. Higgins, 115 Cal. 170, 174.

[fol. 62] 5. This is an action or proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. See, 22 CCP.

A. Judicial action is necessary to perfect title to the land in dispute in the State, since in the case of statutory forfeiture title is not complete until there is a judicial determination of the facts.

Traffic Truck-Sales Co. v. Justices Court, 192 Cal. 377; *People v. Broad*, 216 Cal. 1.

Repeal of the statute providing for automatic forfeiture to the State before the judicial determination of the matter defeats the rights of the State in the premises.

Lemon v. L. A. Term. Ry. Co., 38 Cal. App. (2) 659.

B. Therefore the action by the State is an *ordinary action* either in the nature of a quiet title action or in the nature of an action to enforce a lien (if not on a statutory liability to enforce a forfeiture, which is not admitted).

6. If the action by the state is in the nature of an action to enforce a statutory lien, the right of action is limited as to the time of commencement.

[fol. 63] *People v. Hulbert*, 71 Cal. 72;

City of San Diego v. Higgins, 115 Cal. 170, 174.

7. The question of which statute of limitations is applicable and controlling.

A. The present action by the State to enforce an escheat for violation of the Alien Land Law may be characterized as follows:

1. It is an action upon a statutory liability;
2. It is an action concerning an interest in real property;
3. It is an action to enforce a penalty or forfeiture.

"A forfeiture is the divestiture of specific property without compensation in consequence of some default or act forbidden by law".

25 Cor. Jur. 1170.

See *Hansen v. Vallejo Elect. Light Co.*, 182 Cal. 492.

B. Difficulties arise as to which statute of limitations is applicable because the statutes are not mutually exclusive in their definitions of contemplated cases, and the present case involves elements which might bring it within at least [fol. 64] 5 such statutes. See *Miller & Lux v. Batz*, 131 Cal. 402.

1. CCP 315 if the property element is definitive;
2. CCP 338 (1) if the statutory basis of liability is controlling;
3. CCP 338 (2) if the trespass element is controlling;
4. CCP 340 (2) if the statutory forfeiture element is controlling;
5. CCP 343 if none of the above outlined elements is definitive.

C. CCP 315 is not controlling.

CCP 315 only applies to actions involving the matter of adverse possession (in the traditional meaning of that phrase).

Nat. Soda Prod. Co. v. City of L. A., 23 Cal. (2) 204;
People v. Center, 66 Cal. 551, 554.

D. Although Title II of Part II of CCP is entitled "Time of Commencing Actions Other Than for the Recovery of Real Property", its sections have been applied to cases involving the recovery of real property by the state when such recovery has been based upon a statutory liability.

[fol. 65] 1. Action to enforce swamp land reclamation assessment which was only a lien upon the land and involved no personal liability. CCP 338 (1) applied.

People v. Hulbert, 71 Cal. 72.

2. Where a tax has the effect and force of a judgment and the incidental effect of a lien, as well as creating personal liability, CCP 338 (1) applies, because it is oppressive to have no limitation of time of commencement of action and leads public officers to be negligent in their duties.

City of San Diego v. Higgins, 115 Cal. 170, 174.

3. Action to establish a trust on certain lands and incidentally for an accounting. CCP 343 was applied to the action.

Hannah v. County, 175 Cal. 763, 768.

4. Action to enforce a tax lien on certain real property. CCP 338 (1) applied.

Chambers as Controller v. Gibson, 178 Cal. 416.

5. Apparently an action by a reversioner to recover possession of real property from a grantee of the life tenant. CCP 338 applied.

Thompson v. Pac. Elect. Ry. Co., 203 Cal. 578.

[fol. 66] Accordingly, the causes of action herein are subject to the Statute of Limitations, and barred by the one year statute, because actions upon a statute for a penalty or forfeiture.

Respectfully submitted, Hugh E. Macbeth and Hugh E. Macbeth, Jr., A. L. Wirin and J. B. Tietz, by A. L. Wirin, Attorneys for Plaintiffs.

[fol.67] Filed Mar. 2, 1945. J. B. McLees, Clerk, by
D. Shultz, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SAN DIEGO

No. 120450

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.

THE FEDERAL LAND BANK OF BERKELEY, et al., Defendants
No. 121200

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
FRED Y. OYAMA, Defendant

OPINION ON DEMURRERS TO COMPLAINTS—Filed March 2,
1945

[fol.68] In the first of the above cases the amended petition, insofar as its contents need for the purposes of this opinion be recited, alleges the corporate capacity of the defendant The Federal Land Bank of Berkeley, alleges that the defendants Yoshitaro Yoshimura, Torao Yoshimura and Masami Hirose have at all of the times involved been of the Japanese race, natives and subjects of Japan and not eligible to become citizens of the United States of America; that the defendant Mather Masako Yasukochi, formerly Mather Masako Yasukochi, was and is of the Japanese race but was born in Orange County, California and is now married to the defendant Masami Hirose; that since July 9, 1935, defendant The Federal Land Bank of Berkeley has been and it now is the owner of certain described agricultural lands within the County of San Diego, State of California; that on or about July 25, 1936, defendant The Federal Land Bank of Berkeley executed and delivered a written agreement purporting to be an agreement to sell said land to defendant Mather Masako Hirose, then Mather Masako Yasukochi for \$21,000.00 payable \$4200.00 down, and the rest in installments, part of which remain due and unpaid; that the consideration for said agreement (so far as paid) was paid by the defendants Yoshitaro Yoshimura

and Torao Yoshimura; that no part of the consideration for said agreement was paid by defendant Mather Masako Hirose, formerly Mather Masako Yasukochi, except that the said \$4200.00 down payment to The Federal Land Bank [fol. 69] of Berkeley was paid by a check signed by said Mather Masako Yasukochi on a bank account the funds of which were furnished to said Mather Masako Hirose, formerly Mather Masako Yasukochi, by the defendants Yoshitaro Yoshimura and Torao Yoshimura; and that said Mather Masako Yasukochi was then a minor aged 19 years and had no property other than the funds so supplied to her; that it was understood and agreed between defendants Yoshitaro Yoshimura, Torao Yoshimura and said Mather Masako Yasukochi that said agreement of purchase should be taken in the name of the latter and said real property be subsequently conveyed to her, for the reason that defendants Yoshitaro Yoshimura and Torao Yoshimura were aliens ineligible to become citizens of the United States of America or to acquire, hold, possess, enjoy, cultivate, occupy, transfer or transmit said real property or any part thereof; that on or about July 25, 1936, defendants Yoshitaro Yoshimura and Torao Yoshimura entered into the possession of said real property and thereafter continued to possess, enjoy, use and occupy the same as their own, and in their own right enjoy the beneficial use of said real property for agricultural purposes and the beneficial use of all the crops grown thereon; and that the defendant Mather Masako Hirose, formerly Mather Masako Yasukochi, never possessed, enjoyed and cultivated or occupied all or any part of said real property nor did she at any time have the [fol. 70] beneficial use of all or any of the same or of any of the crops therewith or of the proceeds of such crops, nor did she pay any of the expenses of the cultivation of said real property or any of the taxes assessed thereon, all of which were paid by defendants Yoshitaro Yoshimura and Torao Yoshimura; that defendant Mather Masako Yasukochi, now Mather Masako Hirose, has at all times involved lived elsewhere than on the said real property; that defendants Yoshitaro Yoshimura and Torao Yoshimura claim said real property as their own and have offered to sell the same and to cause defendant The Federal Land Bank of Berkeley to convey good title thereof to their prospective purchaser.

The relief sought is a judgment declaring the escheat of the real property involved to the State of California, under the provisions of the "Alien Property Initiative Act of 1920", as amended, for violation and attempted evasion of the provisions thereof, subject to the right of the defendant The Federal Land Bank of Berkeley to be paid the unpaid residue of the selling price, and that except for the right of said The Federal Land Bank of Berkeley to such payment, it be adjudged that none of the defendants have any rights in the real property or any part thereof as against the State.

The complaint in the other case (No. 121200) sets up two causes of action: In the first of these causes of action it is alleged that at all of the times involved the defendants [fol. 71] Kajiro Oyama, also known as K. Oyama, Kohide Oyama, formerly Kohide Kushino, and Ririchi Kushino, have been persons of the Japanese race, natives of the Empire of Japan and subjects of that empire and by reason thereof not eligible to citizenship under the laws of the United States; that the defendant Fred Y. Oyama, also known as Fred Yoshihiro Oyama, is of the Japanese race but was born in San Diego County, California on or about March 23, 1928; that the defendant June Kushino is of the Japanese race, but was born in San Diego County, California, on March 4, 1921; that on March 22, 1935, the defendant Kajiro Oyama, also known as K. Oyama, was, in the Superior Court of the State of California in and for the County of San Diego, appointed guardian of the person and estate of said Fred Yoshihiro Oyama, a minor, and qualified as such guardian, and has ever since been such guardian; that the defendant June Kushino, attained the age of 21 years on March 4, 1942, but that during her minority the defendant Ririchi Kushino was the guardian of her person and estate. It is alleged that on or about August 18, 1934, the defendants Kajiro Oyama, also known as K. Oyama, and Kohide Oyama, formerly Kohide Kushino, purchased certain described agricultural land in the County of San Diego, State of California, and that on or about that date a purported conveyance of the same was made by one Yonezo Oyama, who was named as grantor therein, and said Fred Y. Oyama was therein named as grantee, and that the purchase [fol. 72] price was \$4000.00, which was paid to said Yonezo Oyama by defendants Kajiro Oyama and Kohide Oyama. It is alleged that upon the execution and delivery of said

purported deed, that is, on or about August 18, 1934, the defendants Kajiro Oyama and Kohide Oyama, entered into the possession of said real property and have ever since occupied and continue to occupy, use enjoy and cultivate the same as their own and have had in their own right the beneficial use and enjoyment of said lands for agricultural purposes, and the beneficial use of the crops grown thereon. It is claimed that the purchase of this property and the taking of the deed in the name of Fred Y. Oyama is a mere subterfuge, a fraud upon the People of the State of California and a violation of the Alien Land Law of California and done by said defendants Kajiro Oyama and Kohide Oyama wilfully, knowingly and with intent, in violation of said Alien Land Law, to obtain the possession, use, occupancy, ownership and enjoyment of said agricultural lands for their own use. It is further alleged that defendant Kajiro Oyama, also known as K. Oyama, has failed to render any account to the Superior Court for his receipts and disbursements as guardian of said Fred Y. Oyama, also known as Fred Yoshihiro Oyama, nor filed any annual or other account or report with the Secretary of State of California as required by Section 5 of the Alien Land Law, nor filed any account or report in said matter with the County Clerk of San Diego County, nor served any such account [fol. 73] on the District Attorney of said County; but that in conducting business affecting said real property he has used the names "Fred Oyama" and "Y. Oyama" and maintained checking accounts in those names for the purpose of evading and violating the Alien Land Law of California.

The second cause of action in this case No. 121200 incorporates various allegations of the first cause of action including those having to do with the race, nativity, citizenship and status of the said parties and goes on to allege that on December 17, 1937, the Superior Court of the State of California in and for the County of San Diego in the matter of the Guardianship of said June Kushino, made an order confirming the sale for \$1500.00 to said Fred Y. Oyama, of certain described land in the said county, a copy of which order was recorded in the recorder's office of said county; that the record title to this property stands in the name of one John Mares, who died intestate in said county on or about December 20, 1943, and that defendant Lawrence W. Janker is the administrator of his estate, but that

defendant Ririchi Kushino purchased said real property from said John Mares in his lifetime, and that Mares executed and delivered to said Ririchi Kushino a deed purporting to convey said real property to said June Kushino. It is alleged that upon the making and recording of said order confirming said purported sale from said June Kushino to said Fred Y. Oyama, the defendants Kajiro Oyama and Kohide Oyama, entered into the possession [fol. 74] of said real property and have ever since occupied, used, enjoyed and cultivated the same as their own and have had in their own right the beneficial use and enjoyment of said land for agricultural purposes, and the beneficial use of the crops grown thereon, and that all of said acts were done by said Kajiro Oyama and Kohide Oyama, wilfully, knowingly and with intent to violate the Alien Land Law of the State of California. The complaint asks that the land described in the first cause of action be decreed to have escheated to the State of California as of August 18, 1934, and that described in the second cause of action as of December 17, 1937, and that all of the defendants be forever barred from asserting any claim, right or title therein as against the State of California.

A demurrer has, in each case, been filed on behalf of the party in whose name the conveyance attacked was taken; and on behalf of those for whose actual use and benefit it is claimed to have been taken, as well as by certain other persons made defendants for the purpose of barring any claims that they may assert to the respective properties involved.

The points urged on behalf of the defendants upon the hearing on the demurrers were these:

First: That each action is barred by the Statute of Limitations.

Second: That changes in Federal legislation respecting [fol. 75] naturalization have superseded the Alien Land Laws of California, and that these are no longer effective.

Third: That in any event, under the present interpretation by the Supreme Court of the United States of provisions of the Federal Constitution, the constitutionality of the Alien Land Laws of this State can no longer be upheld.

(1) Considerable stress has been laid on the provisions of section 312 of the Code of Civil Procedure to the effect that:

"Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute."

I am not sure that I quite understand why this section should be particularly relied on, but the claim may be that by virtue of this section *every* cause of action is subject to some limitation of time, and that, unless some more specific limitation can, in a given case, be pointed out, such case must be classified as falling within some one of the limitations prescribed by the further provisions of the Title (i.e., Title 2 of Part 2 of that Code). If that be the construction contended for, however, I think it entirely too broad. In my view, section 312 should be construed as though it read:

[fol. 76] "Civil actions, *of any of the classes specified in this title*, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases; a different limitation is prescribed by statute."

That would amount to saying merely the general rules laid down in the succeeding sections of the title are to be deemed applicable to all cases falling within this provision, in the absence, but only in the absence, of some other and more specific statute applicable to the facts of a particular case.

Passing, then, to the particular statutory provisions the applicability of which has been discussed, the first in order is section 315, reading:

"The people of this state will not sue any person for or in respect to any real property or the issues or profits thereof, by reason of the right or title of the people to the same, unless—

1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced; or,

2. The people, or those from whom they claim, shall [fol. 77] have received the rents and profits of such real property, or some part thereof, within the space of ten years."

It is to be noted at the outset that the first subdivision of this section, as judicially construed, does not mean precisely what it seems to say. The intention was not to inhibit the State from suing to establish its title to property merely because it had held such title for more than ten years prior to commencing the action. As is said in 16 Cal. Jr. 435-436:

"The words 'right or title' used in the first subdivision refer to the right or title of the state to sue, and not to the right or title upon which the action is based. If this were not so, the state could not maintain an action in respect to land which it held title for more than ten years prior to the beginning of the action, although the invasion of its rights which created the cause of action had been within that period." (See *People v. Banning Co.*, 167 Cal. 643, 646 citing *People v. Center*, 66 Cal. 564.)

In the instant case, I take it that whatever right the State has to sue accrued as of the date of the transaction by which it is claimed that the Alien Land Law was violated. So [fol. 78] considered, Section 315 could have no effect as a bar in the case of *The People v. The Federal Land Bank of Berkeley*, No. 120450, because the transaction complained of did not occur until July 25, 1936, and the action, having been commenced on July 17, 1944, was brought well within the ten years allowed by the statute. So, too, with the transaction involved in the second cause of action in the case of the *People of the State of California v. Oyama*, et al., No. 121200, the same having occurred on December 17, 1937, it is manifest that, under the ten-year statute, if applicable, the action is not barred. The situation would be otherwise, however, with the first cause of action in the Oyama case. There, the transaction complained of being stated to have occurred on August 18, 1934, and the action not having been filed until August 28, 1944, it is patent that if section 315 applies the case is, as to that cause of action, barred. It is true that no prescriptive right under Section 1007 of the Civil Code could operate to confer a title on persons ineligible under the law to acquire one, but for all of that, if

Section 315 of the Code of Civil Procedure applies, the State, whatever its substantive right might be, would be, as to that cause of action, without a remedy.

It has been suggested, however, that the limitation really applicable is Section 340, Subdivision 1, prescribing one year after the cause of action accrues in the case of an [fol. 79] action brought upon a statute for a penalty or forfeiture. It may be doubted, even if the action were for a penalty or forfeiture, whether that provision would have any application since it is in terms made applicable only when the action is given to an individual or to an "individual and the State", whereas an action to declare an escheat lies in favor of the State alone. However, that may be, it must, in the light of *The People of the State of California v. Nakamura*, 125 Cal. App. 268 be now considered and held that an action to declare an escheat is not an action for a penalty or forfeiture, and that, therefore, no limitation of time for the enforcement of a statutory penalty or forfeiture can be said to apply.

Since the oral argument I am in receipt of a letter from defendants' counsel, saying in substance that in their urging other provisions of the Statute of Limitations they failed at the oral argument to stress their main reliance which, the letter states, is on Subdivision 1 of Section 338 of the Code of Civil Procedure prescribing a three year limitation upon "an action upon a liability created by statute other than a penalty or forfeiture." The inapplicability of this provision, however, is obvious. According to Webster's New International Dictionary a "liability" is:

First—"State or quality of being liable; as the liability of an insurer."

Second—"That which one is under obligation to pay, or [fol. 80] for which one is liable. Specif., in the pl., one's pecuniary obligations, or debts, collectively—opposed to assets."

Third, "*Accounting*. A debt; an amount which is owed; whether payable in money, other property or services."

But this present action is not brought to enforce, as against the defendants any liability whatever, but only to determine whether or not they have as against the state any interest in the property affected.

It is true, as suggested by counsel for the demurring defendants, that mere circumstance that an action involves

land does not necessarily mean that no other statutes of limitations can apply to bar it than such as are applicable to actions for the recovery of land, and it is further suggested that since the complaints here charge that the transactions complained of were frauds, the applicable statute may be Subdivision 4 of Section 338 of the Code of Civil Procedure prescribing a three-year limitation as applicable to actions for relief on the ground of fraud or mistake. The question, however, is not what is incidentally involved but what is the gist of the cause of action, and it seems to me clear that the gist of it here is that the State claims to have title to the land and that the defendants are asserting unfounded claims and maintaining a tortious possession, all in derogation of the State's title, and, therefore, that the only one of these statutes that can with plausibility be urged, as applicable, is Section 315 of the [fol. 81] Code of Civil Procedure. Counsel for the People urge, however, that it ought not to be applied for the reason that, though actions to declare escheats under the Alien Land Law are not by express enactment excepted from its operation, nevertheless the clear policy of that law is inconsistent with the application of such a statute. As an analogy counsel refer to the case of *Weber v. State Board of Harbor Commissioners*, 93 U. S. 57, where, in an opinion by Mr. Justice Field, it was held that Section 315 of the California Code of Civil Procedure was ineffectual to bar the establishment, in an action between the State Board of Harbor Commissioners for the Bay of San Francisco and an individual, of the State's right to abate a wharf wrongfully erected upon its tide lands. The Court there said (p. 687):

"Where lands are held by the State simply for sale or other disposition, and not as sovereign in trust for the public, there is some reason in requiring the assertion of her rights within a limited period, when any portion of such lands is intruded upon or occupied without her permission, and the policy of the statute would be carried out by restricting the application to such cases."

The reasoning of the Weber case is not, strictly speaking, applicable here, for I take it that property that comes to the State by escheat is not held by it in any particular

trust, as tide lands, for example, are held (*People v. Weber*, [fol. 82] 152 Cal. 731, 733, *Shirely v. Bouley*, 152 U. S. 1). Escheated lands are held by the State in its proprietary capacity and are, no doubt, subject to sale and disposition like any other lands so held. Undoubtedly, however, the policy of the electors, as embodied in the initiative law of 1920, as well as of the legislature, as evidenced by the original Alien Land Law of 1913 and various subsequent acts, would be just as much thwarted by allowing ineligible aliens to remain in possession of lands illegally held by them for more than ten years, as of lands so held by them for a lesser period, and I do not think it would be straining the function of interpretation to hold that, though it did not do so expressly, our alien land legislation by implication has excepted from the operation of Section 315 of the Code of Civil Procedure lands which ineligible aliens have undertaken to acquire in violation of its terms.

On the whole, I incline to the view that no statute of limitations can be available to ineligible aliens to bar such actions as those here involved. As respects the other demurring defendants, it does not appear from the face of the complaints that they are or ever have been in possession of any of the property involved adversely to the State, and therefore it does not appear that any statutes of limitations have commenced to run in favor of any of them, and as to them, the proceedings amount to no more than actions to quiet title. If the facts are otherwise, they should be

[fol. 83] (2)—The next point made is that the ineligibility to citizenship alleged as against the parties alleged to have undertaken to acquire the beneficial interest in the land involved is based purely on the fact that, being aliens, they are aliens of the Japanese race. As such they would, beyond question, be ineligible to become citizens were there no applicable statute except section 703 of Title 8 of the United States Code which, since the amendment of 1943, reads as follows:

"The right to become a naturalized citizen under the provisions of this chapter shall extend only to white persons, persons of African nativity or descent, descendants of races indigenous to the Western Hemisphere, and Chinese persons or persons of Chinese de-

secent: Provided, That nothing in this section shall prevent the naturalization of native-born Filipinos having the honorable service in the United States Army, Navy, Marine Corps, or Coast Guard as specified in section 724, nor of former citizens of the United States who are otherwise eligible to naturalization under the provisions of section 717."

However, in 1942 there was added a new section numbered 1001, which so far as I need quote it, reads:

[fol. 84] "Notwithstanding the provisions of sections 703 and 726 of this title, any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who, having been lawfully admitted to the United States, including its Territories and possessions, shall have been at the time of his enlistment or induction a resident thereof, may be naturalized upon compliance with all the requirements of the naturalization laws except that no declaration of intention and no period of residence within the United States or any State shall be required * * *"

It is now claimed that because, so far as appears from the complaints, the former ineligible aliens, here made defendants, are eligible to join the armed forces of the United States during the present war, they have ceased to be ineligible to citizenship and, therefore, that the Alien Land Law of the State has no application to them. This argument is ingenious but seems to me to grasp at the literal employment of language rather than to regard the apparent intent with which Section 1001, *supra*, was enacted. The circumstance that in 1943 Section 703 was broadened to include, as eligible to citizenship, "Chinese persons or persons of Chinese descent", on the principle *inclusio unius est exclusio alterius* excludes the idea that the Congress intended Section 1001 to bring persons of all races whatsoever into the category of persons eligible to citizenship. The 1943 amendment to Section 703 is in itself a legislative expression to the effect that eligibility to citizenship, within the meaning of the United States Code, can be acquired only by persons of races not named in that section, by becoming members of the armed forces of the

[fol. 85] *unius est exclusio alterius* excludes the idea that

United States during the present war. Their entry into the armed forces was not contemplated as a mere procedural step in their quest for citizenship. It was the manifest intention that their right to citizenship should flow from their membership in the armed forces, not merely from their eligibility to join such armed forces. In the nature of things, the proportion of our population previously, for racial reasons, ineligible to citizenship who could be expected to join the armed forces during the present war, was, though not negligible, relatively small, and it is apparent that as respects eligibility to citizenship, the legislative intent in enacting Section 1001 was to create an exceptional situation as to that relatively small number of persons. If that intent was not sufficiently apparent from the terms of Section 1001 itself, it is made so by the limited nature of the 1943 amendment to Section 703, and no verbal literalism can be construed as making the whole mass of persons previously ineligible to citizenship because of race, now [fol. 86] eligible, because such few of them as the armed forces may be able to absorb will thereby become eligible.

It is true that the successive amendments of Section 703 indicate a legislative tendency to reduce exclusions from citizenship on racial grounds. However, much they may be in sympathy with that tendency, however, it is not for the courts to outstrip the legislative authority in an eagerness to accomplish that result. The function of the courts is to interpret laws, not to make them.

Moreover, it is clear from such cases as *People v. Nakamura*, supra, that escheats under the Alien Land Law must be held to be automatic upon the occurrence of the violations which produce them. If the proceedings for their declaration and enforcement are not penal or punitive, then such proceedings can be no more than the enforcement of rights in the State which have already vested as of the date of the acts which by legal operation brought the escheats into effect. Subsequent statutory amendments would not undo what had been fully done.) If the escheats claimed have here occurred, it has, under the views expressed in *People v. Nakamura*, been long prior to the enactment of Section 1001 of Title 8, United States Code, to wit: under Sections 7, 8 and 9 of our Alien Land Law, as of the respective dates of the acquisitions or transfers complained of, and they cannot, in any tenable view, have been

affected by the enactment of that federal statute, whatever [fol. 87] the effect of the latter may have been on eligibility to citizenship.

(3). I am not inclined to devote much space to further consideration of the general question of the constitutionality of the alien land legislation of this State. It has time and again been sustained. (*Terrace v. Thompson*, 263 U. S. 197; *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313; *Frick v. Webb*, 263 U. S. 326; *Cockrill v. People of the State of California*, 268 U. S. 258; *Morrison v. California*, 288 U. S. 591).

Whether in view of changed views on the subject of race, classifications stressing that consideration have ceased to be reasonable in such a sense as to render them obnoxious to limitations expressed in the Federal Constitution is a question not very appropriate for consideration by a nisi prius court. In that connection I can only repeat what I felt it my duty to say while sitting pro tempore on the District Court of Appeal for the Fourth District.

"Recognizing, however, as we do, the important bearing of the pronouncement of the Supreme Court of the United States upon the discussion, we still regard it as the function, rather of the Supreme Court of the State than of any court subordinate to it, to announce changes in what has hitherto been treated within the State as the settled law with respect to the constitutionality of a given application of a state statute, un[fol. 88] less, indeed, there be so exact a parallel between a particular case and a controlling decision of a federal court that no reasonable distinction between them can be made." (*Birkhofer v. Krumm*, 27 Cal. App. 2d, 513, 536-537).

A fortiori must this be true when what has hitherto been regarded as the settled law has been so regarded because of decisions of the Supreme Court of the United States itself. Having appealed to Ceasar, to Caesar the defendants must needs, on the constitutional question, go.

I hardly need to add that it is no part of the duty of this Court to undertake the difficult task of defending either the justice or the expediency of the alien land legislation of this State. So far as that aspect of the situation is concerned the scope of this Court's inquiry is strictly con-

fined to whether or not the legislation is obnoxious to constitutional inhibitions. The Supreme Courts, both of this State and of the United States, have expressly held that it is not. Until they shall speak again, otherwise than by some assumed implication, their determinations must be followed here. Moreover, no belief on the part of the defendants even if they entertain such belief, in the impropriety of this legislation can furnish any excuse, legal or moral, for using indirections such as those here charged to evade its effect.

[fol. 89] Each of the demurrs is overruled, and thirty days allowed the demurring defendants in which to answer.

Charles C. Haines, Judge of the Superior Court.

[fol. 90]. [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN
AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

NOTICE OF RULING DEMURRER—Filed March 3, 1945

To Fred Y. Oyama, Kajiro Oyama, Kohide Oyama, Ririchi Kushino, June Kushino and Yonezo Oyama, Defendants, and to A. L. Wirin, J. B. Tietz, Hugh E. Macbeth and Hugh E. Macbeth, Jr., Their Attorneys;

You will please take notice that on the 2nd day of March, 1945, the court overruled defendants' demurrer to the petition herein and gave defendants thirty days to answer said petition.

Dated: San Diego, California, March 2, 1945.

Robert W. Kenhy, Attorney General; Everett W. Mattoon, Deputy Attorney General; Thomas Whelan, District Attorney of the County of San Diego, State of California. By Duane J. Carnes, Deputy District Attorney; Attorneys for Plaintiff.

[fol. 91] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SAN DIEGO

[Title omitted]

AFFIDAVIT OF SERVICE OF NOTICE OVERRULING DEMURRER

STATE OF CALIFORNIA,

County of San Diego, ss:

Beatrice A. Planson being first duly sworn deposes and says:

That affiant is a citizen of the United States and a resident of the County of San Diego; that affiant is over the age of eighteen years and is not a party to the within and above entitled action:

That affiant's business address is: Room 302 Civic Center Bldg., San Diego 1, California;

That on the 2nd day of March, 1945, affiant served the within Notice Overruling Demurrer on defendants Fred Y. Oyama et al., in said action, by placing a true copy thereof in an envelope addressed to the attorneys of record for said — — — at the office of said attorneys as follows (Then quote from envelope name and address of addressee) A. L. Wirin and J. B. Tietz, Hugh E. Macbeth and Hugh E. MacBeth, Jr., 257 South Spring Street, Los Angeles 12, California, and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at San Diego, California, where is located the office of the attorneys for the party by and for whom said service was made.

That there is a regular daily communication of United States mail between the place of mailing and the place so addressed.

Beatrice A. Planson.

Subscribed and sworn to before me this 2nd day of March, 1945. Marcia Kerns, Notary Public in and for the County of San Diego, State of California.
(Seal.)

My commission expires January 17, 1949.

[fol. 93] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SAN DIEGO

[Title omitted]

ORDER EXTENDING TIME TO ANSWER—Filed March 31, 1945.

Good cause appearing therefore and counsel for the plaintiff consenting;

It Is Ordered, that the time of the defendants for answering the complaint be and it is extended until April 30, 1945.

Dated March 31, 1945.

Charles C. Haines, Judge of the Superior Court.

[fol. 94] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SAN DIEGO

[Title omitted]

ANSWER—Filed April 28, 1945

Now come the defendants, Fred Y. Oyama, Kajiro Oyama, Kohide Oyama, Ririchi Kushino, June Kushino and Yonezo Oyama, answering plaintiff's Petition on File herein, deny, admit and aver as follows:

I

Defendants admit that the defendants, Kajiro Oyama, also known as K. Oyama, Kohide Oyama, formerly Kohide Kushino and Ririchi Kushino, were and each of them was and now is of the Japanese Race, natives of the Empire of Japan and citizens and subjects of the Empire of Japan, but deny that by reason thereof they are not eligible to citizenship under the laws of the United States.

II

Defendants admit that the defendant Fred Y. Oyama, also known as Fred Yoshihiro Oyama, is of the Japanese Race and was born in San Diego, California, on or about March

[fol. 95] 23, 1928; that the defendant June Kushino is of the Japanese Race and was born in San Diego, California, on March 4, 1921; that the defendant Kajiro Oyama, also known as K. Oyama, was appointed guardian of the person and estate of said Fred Yoshihiro Oyama, a minor, on March 22, 1935, and qualified as such guardian and ever since has been and now is the guardian of the person and estate of said Fred Y. Oyama; that the defendant June Kushino, also known as Junko Kushino, attained the age of 21 years on March 4, 1942; that during her minority the defendant Ririchi Kushino was the guardian of the person and estate of said June Kushino.

III

Defendants deny that on or about August 18, 1934, or at any time, defendants Kajiro Oyama, and Kohide Oyama, formerly Kohide Kushino, purchased that certain parcel of real property described as:

All that portion of the Easterly Half of the Southwest-
erly Quarter of Quarter Section 164 in the Rancho da la
Nacion, in the City of Chula Vista, County of San
Diego, State of California, according to the Map thereof
No. 166, made by Merrill, on file in the County Record-
er's office, lying East of the Westerly 140 feet of even
width thereof, and North of the Southerly 670.15 feet
of even width thereof, Excepting therefrom the South-
[fol. 96] erly 2 acres thereof. Also Excepting the
Northerly 40 feet of said property deeded to the City
of Chula Vista for street purposes.

Defendants further deny that the conveyance, on or about
said 18th day of August, 1934, of said real property to
defendant Fred Y. Oyama by Yonezo Oyama was a "pur-
ported" grant deed or anything else than a bona fide trans-
action and conveyance.

Defendants aver that Kajiro Oyama, the father, furnished
the funds and/or credits to purchase the said property as a
gift for his child, Fred Y. Oyama, and that said entire
transaction was a bona fide gift and not a subterfuge and
fraud upon the People of the State of California, as alleged
in the complaint.

IV

Defendants admit that the real property hereinbefore
described is and at all times herein-mentioned has been

agricultural land, and at all times herein-mentioned has been used for agricultural purposes.

V

Defendants deny that the defendants Kajiro Oyama and Kohide Oyama have occupied and do now use and cultivate said lands as their own, or at any time have had in their own right the beneficial use and enjoyment of said land for agricultural purposes, and the beneficial use of the crops grown thereon.

[fol. 97]

VI

For their answer to the second cause of action to the complaint, defendants refer to each and all of the above denials, admissions, and averments and adopt and re-allege each and all of the allegations contained in paragraphs I, II, III, IV, V.

VII

Defendants answering herein deny that any of the acts complained of in the second cause of action and set forth in paragraphs II, III, IV, V, of said second cause of action, were done by defendants Kajiro Oyama and Kohide Oyama wilfully, knowingly and with intent to violate the alien land law of the State of California or with intent to evade or avoid escheat, as provided therein, but defendants aver that all of said acts recited in said paragraphs were done in good faith and for the purpose of acquiring for their son, Fred Y. Oyama, as a gift, a means of earning a livelihood and for the further purpose of guarding and husbanding said gift for said purpose. For an affirmative defense the defendants allege that the plaintiff should not recover because of laches.

Wherefore defendants pray judgment against plaintiffs dismissing said Petition to Declare an Escheat together with Costs and disbursements of said action.

A. L. Wirin and J. B. Tietz, Attorneys for Defendants, By J. B. Tietz.

[fol. 98] *Duly sworn to by J. B. Tietz. Jurat omitted in printing.*

[fol. 99] **AFFIDAVIT OF SERVICE OF ANSWER**

(C. C. P. 1013a)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Miriam Lischner, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business address is 257 So. Spring

residence

St., Los Angeles 12, Calif. That on the 25th day of April, 1945, affiant served the within Answer on the Attorney for plaintiff in said action by placing a true copy thereof in an envelope addressed to the attorney of record for said Plaintiff, at the business address of said attorney, as fol-

residence

lows: Duane J. Carnes, Deputy, Office of District Attorney, 302 Civic Center, San Diego, Calif., and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Postoffice at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or there is a regular communication
and

by mail between the place of mailing and the place so addressed.

Miriam Lischner.

Subscribed and sworn to before me this 25th day of April, 1945. J. B. Tietz, Notary Public in and for the County of Los Angeles, State of California.
(Seal.)

[fol. 100] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SAN DIEGO

[Title omitted]

AMENDMENT TO COMPLAINT—Filed August 24, 1945

Upon filing the complaint, plaintiff being ignorant of the true name of a defendant, having designated him in the complaint by the fictitious name, Doe One, and having discovered the true name to be Axel Mares, hereby amends his complaint by inserting such true name in the place of such fictitious name wherever it appears in said complaint.

Robert W. Kenny, Attorney General of the State of California. Everett W. Mattoon, Deputy Attorney General. Thomas Whelan, District Attorney of the County of San Diego, State of California, By Duane J. Carnes, Deputy District Attorney, Attorneys for Plaintiff.

[fol. 101] Proper cause appearing, plaintiff is hereby allowed to file the above amendment to the complaint.

Dated August 24, 1945.

Joe L. Shell, Presiding Judge.

[Title omitted]

DISCLAIMER OF AXEL MARCS

Comes now the defendant Axel Mares, sued herein as Doe One, and answers the petition on file herein, as follows:

Said defendant disclaims all right, title or interest of whatsoever character or extent, in or to any or all of the premises described in the plaintiff's petition on file herein.

Axel Mares.

[fol. 104]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN
AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed September 4, 1945

This cause came on regularly for trial on the 21st day of August, 1945, before the court sitting without a jury, a jury trial having been duly waived by the parties, Robert W. Kenny, Attorney General of the State of California, by Everett W. Mattoon, Deputy Attorney General, Thomas Whelan, District Attorney of San Diego County, by Duane J. Carnes, Deputy District Attorney, appearing as attorneys for plaintiff and petitioner; and A. L. Wirin, Esq. appearing as attorney for the defendants, Fred Y. Oyama, Kajiro Oyama individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor, Kohide Oyama, formerly Kohide Kushino, Ririchi Kushino, June Kushino, [fol. 105] and Yonezo Oyama; and, it appearing to the satisfaction of the court that the defendants George Schertzer, John Kurfurst and Lawrence W. Junker as the administrator of the estate of John Mares, deceased, were duly and personally served with the Petition and Order to Show Cause herein, and it further appearing that no appearance has been made by said defendants and no answer received herein, and the default of said defendants having been duly entered, and it further appearing that defendant Axel Mares, sued herein as Doe One, has disclaimed all right, title or interest in or to the real property hereinbelow described, and the court having heard the evidence and examined the proofs, and the cause having been duly submitted to the court for its decision, the court finds the facts as follows, to wit:

FIRST CAUSE OF ACTION

- (1) That all of the allegations of the Petition to declare an escheat to the State of California are true;
- (2) That the defendants Kajiro Oyama, Kohide Oyama and Ririchi Kushino are and each of them is of the Japanese race, natives of the Empire of Japan and citizens and

subjects of the Empire of Japan, and by reason thereof not eligible to citizenship under the laws of the United States;

(3) That the defendant Fred Yoshihiro Oyama, also known as Fred Y. Oyama, is of the Japanese race, and was born in San Diego, California, on or about March 23, 1928, and is a citizen of the United States of America; that the [fol. 106] defendant June Kushino is of the Japanese race, and was born in San Diego, California, on or about March 4, 1921, and is a citizen of the United States of America; that the defendant Kajiro Oyama was, on March 22, 1935, in the Superior Court of the State of California in and for the County of San Diego, appointed guardian of the person and estate of the defendant Fred Yoshihiro Oyama, a minor, and qualified as such guardian, and ever since had been and now is guardian of the person and estate of said minor; that the defendants Kajiro Oyama and Kohide Oyama are the father and mother of the defendant Fred Yoshihiro Oyama, also known as Fred Y. Oyama.

(4) That there is no treaty now existing between the Government of the United States of America and the government of the Empire of Japan, by which citizens or subjects of the Empire of Japan, or natives of Japan are permitted to acquire, possess, enjoy, use, cultivate, occupy, transfer, own or inherit lands for agricultural purposes in the State of California, or to have in whole or in part the beneficial use of agricultural land in the State of California or elsewhere in the United States, nor was there on December 9, 1920, nor has there even been any such treaty at any of the times mentioned in this complaint;

(5) That on or about the 18th day of August, 1934, defendants Kajiro Oyama and Kohide Oyama purchased that certain parcel of real property described as:

[fol. 107] All that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166, made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet of even width thereof, and North of the Southerly 670.15 feet of even width thereof, Excepting therefrom the Southerly 2 acres thereof. Also Excepting the North-

erly 40 feet of said property deeded to the City of Chula Vista for street purposes.

That on or about said 18th day of August, 1934, said real property was purported to be conveyed to defendant Fred Y. Oyama by Yonezo Oyama by a purported grant deed wherein the said Yonezo Oyama was named grantor and Fred Y. Oyama was named grantee; that on the 1st day of March, 1935, said purported grant deed was recorded at Book 380, Page 275 of Official Records in the office of the County Recorder of San Diego County; that the purchase price for said purported conveyance was the sum of Four Thousand Dollars (\$4,000.00), which was paid by the defendants Kajiro Oyama and Kohide Oyama to Yonezo Oyama;

That it is not true that Kajiro Oyama furnished said purchase price as a gift for his child said Fred Y. Oyama; [fol. 108] that it is not true that said transaction was a gift from Kajiro Oyama to said Fred Y. Oyama;

(6) That said real property is and at all times herein mentioned has been agricultural land, and at all times herein mentioned has been used for agricultural purposes;

(7) That upon the execution and delivery of the purported deed of said lands on or about August 18, 1934, the defendants Kajiro Oyama and Kohide Oyama entered into the possession of said real property, and thereafter did occupy, use, enjoy, and cultivate said lands as their own and ever since said date have had in their own right the beneficial use and enjoyment of said lands for agricultural purposes, and the beneficial use of the crops grown thereon, and the beneficial use of the rents paid therefor;

(8) That said purchase of said property and the purported deed taken in the name of Fred Y. Oyama is a mere subterfuge and cover for the transaction of the said defendants, and is a fraud upon the People of the State of California, and that by reason of the premises the said State of California; the plaintiff herein, is entitled to have said property declared escheated to the said State of California;

(9) That the defendant Kajiro Oyama, also known as K. Oyama, at no time accounted to the said Superior Court for his receipts and expenditures as guardian of the person and estate of defendant Fred Y. Oyama, also known as

[fol. 109] Fred Yoshihiro Oyama, a minor; that said defendant Kajiro Oyama has at no time since said 18th day of August, 1934, filed any annual or other account or report with the Secretary of State of California as required by the provisions of section 5 of the Alien Land Law of California; that said defendant has at no time filed in the office of the County Clerk of San Diego County any report or account; that said defendant has at no time served a copy of any account or report on the District Attorney of San Diego County;

(10) That all of said acts hereinbefore set forth were done by said defendants Kajiro Oyama and Kohide Oyama wilfully, knowingly and with the intent to violate the Alien Land Law of the State of California, and with the intent to prevent, evade and avoid escheat as provided therein and by means whereof said Kajiro Oyama and Kohide Oyama did unlawfully and in violation of said Alien Land Law of California obtain the possession, use, occupancy, ownership and enjoyment of said agricultural lands hereinbefore described, and ever since said date of August 18, 1934, have had, owned, possessed, used and enjoyed, cultivated and occupied said lands, and do now have, own, possess, use, cultivate, occupy and enjoy said lands for agricultural purposes.

(11) That the defendants Yonezo Oyama, George Schertzer, John Kurfurst, Kirichi Kushino and June Kushino have no right, title, interest or claim in or to said real property;

[fol. 110] SECOND CAUSE OF ACTION

(1) That all of the allegations of plaintiff's and petitioner's Second Cause of Action are true;

(2) That it is not true that the acts recited in Plaintiff's and Petitioner's Second Cause of Action were done in good faith, or for the purpose of acquiring for the plaintiff Fred Yoshihiro Oyama as a gift as a means of earning a livelihood;

(3) That none of the allegations of Paragraph 7 of defendants' Answer are true;

(4) That the defendants Kirichi Kushino, June Kushino, Yonezo Oyama, Lawrence W. Junker as administrator of the Estate of John Mares, deceased, Axel Mares, sued herein as

Doe One, George Schertzer and John Kurfurst have no right, title, interest or claim in or to said real property;

(5) That on or about the 17th day of December, 1937, defendants Kajiro Oyama and Kohide Oyama purchaser that certain parcel of real property described as:

The Southerly 2 acres of that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166 made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet, of even width thereof, and North of [fol. 111] the Southerly 670.15 feet, of even width thereof.

That the purchase price for said property was the sum of Fifteen Hundred Dollars (\$1500.00), which was paid by said defendants Kajiro Oyama and Kohide Oyama to the defendants Ririchi Kushino and June Kushino;

(6) That on or about the 17th day of December, 1937, the defendants Kajiro Oyama and Kohide Oyama entered into the possession of said real property, and thereafter did occupy, use, enjoy and cultivate said lands as their own and ever since have had in their own right the beneficial use and enjoyment of said lands for agricultural purposes, and the beneficial use of the crops grown thereon, and the beneficial use of the rents paid therefor; that said purchase of said property and the proceedings taken in the matter of the guardianship of the person and estate of June Kushino, a minor, is a mere subterfuge and cover for the transaction of the said defendants, and is a fraud upon the People of the State of California;

(7) That all of said acts hereinbefore set forth were done by said defendants Kajiro Oyama and Kohide Oyama wilfully, knowingly and with the intent to violate the Alien Land Law of the State of California, and with the intent to prevent, evade and avoid escheat as provided therein and by means whereof said Kajiro Oyama and Kohide Oyama did unlawfully and in violation of said Alien Land [fol. 112] Law of California obtain the possession, use, occupancy, ownership and enjoyment of said agricultural lands hereinbefore described and ever since said date of

December 17, 1937, have had, owned, possessed, used and enjoyed, cultivated and occupied said lands, and do now have, own, possess, use, cultivate, occupy and enjoy said lands for agricultural purposes.

(8) That it is not true that the bringing of this action, as to either the first or second cause of action, is barred by laches.

CONCLUSIONS OF LAW

As a conclusion of law from the foregoing facts the court finds that the plaintiff and petitioner is entitled to a judgment declaring:

I

That as of the 18th day of August, 1934, and as of the date of commencement of this action, title to the parcel of land situate in the County of San Diego, State of California, described as:

All that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166, made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet [fol. 113] of even width thereof, and North of the Southerly 670.15 feet of even width thereof, Excepting therefrom the Southerly 2 acres thereof. Also Excepting the northerly 40 feet of said property deeded to the City of Chula Vista for street purposes,

was and now is vested in the State of California as the owner in fee simple absolute; and did escheat to and become and remain the property of the State of California;

II

That as of December 17, 1937, and as of the date of the commencement of this action, title to the parcel of land situate in the County of San Diego, State of California, described as:

The Southerly 2 acres of that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula

Vista, County of San Diego, State of California, according to the Map thereof No. 166 made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet, of even width thereof, and North of the Southerly 670.15 feet, of even width thereof,

was and now is vested in the State of California as the owner in fee simple absolute; and did escheat to and become and remain the property of the State of California;

[fol. 114]

III

That the defendants Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junkō Kushino; Yonezo Oyama; Lawrence W. Junker, as administrator of the Estate of John Mares, deceased; George Schertzer; John Kurfnrst; Axel Mares, sued herein as Doe One; have not, nor has either of them any right, title, or interest in or to said property herein described, or any part thereof, as against the State of California, and they are hereby perpetually enjoined and restrained from setting up or making any claim to or upon the real property above described, or any part thereof.

Dated: Sept. 4, 1945.

Joe L. Shell, Judge of the Superior Court.

[fol. 115] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SAN DIEGO

No. 121200

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

FRED Y. OYAMA, also known as FRED YOSHIHIRO OYAMA, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker; as administrator of the Estate of John Mares, deceased; George Schertzer; John Kurfurst; Doe One; Doe Two and Doe Three, Defendants

JUDGMENT—September 17, 1945

This cause came on regularly for trial on the 21st day of August, 1945, before the court sitting without a jury, a jury trial having been duly waived by the parties, Robert W. Kenny, Attorney General of the State of California, by Everett W. Mattoon, Deputy Attorney General, Thomas Whelan, District Attorney of San Diego County, by Duane J. Carnes, Deputy District Attorney, appearing as attorneys for plaintiff and petitioner; and A. L. Wirin, Esq. appearing as attorney for the defendants, Fred Y. Oyama, Kajiro Oyama individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor, Kohide Oyama, formerly Kohide Kushino, Ririchi Kushino, [fol. 116] June Kushino, and Yonezo Oyama; and, it appearing to the satisfaction of the court that the defendants George Schertzer, John Kurfurst and Lawrence W. Junker as the administrator of the estate of John Mares, deceased, were duly and personally served with the Petition and Order to Show Cause herein, and it further appearing that no appearance has been made by said defendants and no answer received herein, and the default of said defendants having

been duly entered; and it further appearing that defendant Axel Mares, sued herein as Doe One, has disclaimed all right, title or interest in or to the real property hereinbelow described; and the court having heard the evidence and having examined the proofs, and the court being fully advised in the premises, and having filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith, Now, Therefore, by reason of the law and the findings aforesaid, It Is Hereby Ordered, Adjudged and Decreed:

I

That as of the 18th day of August, 1934, and as of the date of commencement of this action, title to the parcel of land situate in the County of San Diego, State of California, described as:

All that portion of the Easterly Half of the Southweste-
rly Quarter of Quarter Section 164 in the Rancho de la
Nacion, in the City of Chula Vista, County of San
Diego, State of California, according to the Map
[fol. 117] thereof No. 166, made by Morrill, on file
in the County Recorder's office, lying East of the West-
erly 140 feet of even width thereof, and North of the
Southerly 670.15 feet of even width thereof, Excepting
therefrom the Southerly 2 acres thereof. Also Except-
ing the Northerly 40 feet of said property deeded to
the City of Chula Vista for street purposes,

was and now is vested in the State of California as the owner in fee simple absolute; and did escheat to and become and remain the property of the State of California;

II

That as of December 17, 1937, and as of the date of the commencement of this action, title to the parcel of land situate in the County of San Diego, State of California, described as:

The Southerly 2 acres of that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula Vista, County of San Diego, State of California, accord-

ing to the Map thereof, No. 166 made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet, of even width thereof, and North of the [fol. 118] Southerly 670.15 feet, of even width thereof,

was and now is vested in the State of California as the owner in fee simple absolute; and did escheat to and become and remain the property of the State of California;

III

That the defendants Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as administrator of the Estate of John Mares, deceased; George Schertzer; John Kurfurst; Axel Mares, sued herein as Doe One; have not, nor has either of them any right, title, or interest in or to said property herein described, or any part thereof, as against the State of California, and they are hereby perpetually enjoined and restrained from setting up or making any claim to or upon the real property above described, or any part thereof.

Dated Sep. 17, 1945.

Joe L. Shell, Judge of the Superior Court.

[fol. 119] Clerk's Certificate to foregoing Judgment Roll omitted in printing.

[fol. 120] [File endorsement omitted]

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SAN DIEGO**

[Title omitted]

NOTICE OF ENTRY OF JUDGMENT—Filed September 22, 1945**To the Defendants Fred Y. Oyama, Kajiro Oyama, Kohide Oyama, Yonezo Oyama, Ririchi Kushino and June Kushino, and to A. L. Wirin and J. B. Tietz, Their Attorneys:**

Notice is hereby given that the judgment heretofore rendered in favor of the Plaintiff and against the defendants was entered on September 17, 1945, in Judgment Book 128 at Page 895.

Dated this 21st day of September, 1945.

Robert W. Kenny, Attorney General. Everett W. Mattoon, Deputy Attorney General. Thomas Whelan, District Attorney in and for the County of San Diego, State of California, By Duane J. Carnes, Deputy District Attorney, Attorneys for Plaintiff.

[fol. 121] **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

[Title omitted]

AFFIDAVIT OF SERVICE OF NOTICE OF ENTRY OF JUDGMENT**STATE OF CALIFORNIA,****County of San Diego, ss.:**

Beatrice A. Planson being first duly sworn deposes and says: That affiant is a citizen of the United States and a resident of the County of San Diego; that affiant is over the age of eighteen years and is not a party to the within and above entitled action;

That affiant's business address is: Room 302 Civic Center Bldg., San Diego 1, California;

That on the 21st day of September 1945, affiant served the within Notice of Entry of Judgment on the defendants in said action, by placing a true copy thereof in an envelope.

addressed to the attorneys of record for said defendants at the office of said attorneys as follows (Then quote from envelope name and address of addressee) A. L. Wirin and J. B. Tietz, 257 South Spring Street, Los Angeles 12, California, and by then sealing said envelope and depositing [fol.122] the same, with postage thereon fully prepaid, in the United States Post Office at San Diego, California, where is located the office of the attorneys for the party by and for whom said service was made.

That there is a regular daily communication of United States mail between the place of mailing and the place so addressed.

Beatrice A. Planson,

Subscribed and sworn to before me this 21st day of September, 1945. J. B. McLees, County Clerk and ex officio Clerk of the Board of Supervisors, by M. Nasland, Deputy in and for the County of San Diego, State of California. (Seal.)

[fol. 123] [File endorsement omitted]

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SAN DIEGO**

[Title omitted]

NOTICE OF APPEAL, NOTICE TO PREPARE REPORTER'S TRANSCRIPT, AND CLERK'S TRANSCRIPT, AND REQUEST FOR TRANSFER OF EXHIBITS—Filed September 27, 1945

To J. B. McLees, Clerk of the above-entitled court, and to the plaintiff and Robert W. Kenney, and to Duane J. Carnes, of Counsel for the Plaintiff:

Please take notice that the defendants, Fred Y. Oyama, Kajiro Oyama, Yoshihiro Oyama, Kohide Oyama, Hirichi Kushino, June Kushino and Yonezo Oyama, hereby appeal to the Supreme Court of the State of California from the judgment entered herein on September 17, 1945.

The Clerk of the Court is requested to prepare a Reporter's Transcript of the oral proceedings and a Transcript of all the records and papers on file with said Clerk (except the original exhibits); said Clerk's Transcript to include

the judgment roll and all the pleadings contained in said judgment roll, including the written opinion of the Court on demurrer (in the instant case and in People v. Federal Land [fol. 124] Bank of Berkeley, bearing #120450 of this Court); also this Notice.

The Clerk is also requested to cause all the original exhibits introduced in evidence at the trial to be transferred to the Clerk of the Supreme Court of California.

A. L. Wirin and J. B. Tietz, by A. L. Wirin, Attorneys for Defendants, Fred Y. Oyama, Kajiro Oyama, Fred Yoshihiro Oyama, Kohide Oyama, Hirich Kushino, June Kushino, Yonezo Oyama.

[fol. 125] **AFFIDAVIT OF SERVICE BY MAIL**

(C. C. P. 1013a)

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

Miriam Lischner, being first duly sworn, says: That affiant is a citizen of the United States and resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business address is 257 So. Spring resident

St., Los Angeles 12, Calif. That on the 26th day of September, 1945, affiant served the within Notice of Appeal, Notice to Prepare Reporter's Transcript and Clerk's Transcript, and Request for Transfer of Exhibits on the Plaintiff in said action by placing a true copy thereof in an envelope addressed to the attorney of record for said Plaintiff, at the business address of said attorney, as follows: "Duane residence

J. Carnes, Deputy District Att'y, 302 Civic Center, San Diego 1, Calif., and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Postoffice at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or there is a regular communication and

by mail between the place of mailing and the place so addressed.

Miriam Lischner.

Subscribed and Sworn to before me this 26 day of September 1945. — Tiez, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fols. 126-127] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 128-131] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

From San Diego County. Hon. Joe L. Shell, Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

FRED Y. OYAMA, also known as FRED YOSHIHIRO OYAMA, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as administrator of the Estate of John Mares, deceased; George Schertzer; John Kurfurst; Doe One; Doe Two and Doe Three, Defendants and Appellants

Reporter's Transcript

APPEARANCES:

Robert W. Kenny, Attorney General, Library & Courts Bldg., Sacramento, California, by Everett W. Mattoon, Deputy Attorney General, 600 State Bldg., Los Angeles 12, California, Attorneys for Plaintiff and Respondent.

Thomas Whelan, District Attorney, Court House, San Diego, California, by Duane J. Carnes, Deputy District Attorney, 302 Civic Center Bldg., San Diego, California; A. L. Wirin and J. B. Tietz, by A. L. Wirin, 257 South Spring Street, Los Angeles 12, California, Attorneys for Defendants and Appellants.

[fol. 132] San Diego, California, Tuesday, August 21,
1945; 2:00 P. M.

COLLOQUY BETWEEN COURT AND COUNSEL.

Mr. Wirin: May I, perhaps, address the Court on a preliminary matter in connection with the case?

The Court: Yes.

Mr. Wirin: I might be a little misadventurous in this case—at least the defendants are not ready to proceed, and Judge Heald was so advised this morning. Certain of the witnesses—in fact key witnesses—and the defendants have not been in the State of California since the evacuation. At least one of them is on his way now, and being an alien it was necessary to secure a permit to travel and that was not available to him until yesterday. He has that permit and is on his way from Salt Lake City to Los Angeles where he will reach my office and then will be directed to come to San Diego. We anticipate that he will arrive this evening or not later than tomorrow morning, so we are not ready to proceed until I have had an opportunity to confer with my client and to get ready for trial, which will be tomorrow morning.

Also, there is this additional event. When the matter was called before Judge Heald this morning witnesses for the plaintiff were excused until tomorrow morning so I think neither side has a witness to proceed.

The Court: Well, I assumed, when the matter was transferred here, that we could at least get a start on it. I [fol. 133] don't understand the excusing of available witnesses until tomorrow.

Mr. Wirin: I represent the defendants.

The Court: They were released by Judge Heald?

Mr. Wirin: Upon request of the plaintiff. I think the thought at that time was that there wouldn't be a trial department open. Mr. Carnes can better account for that as I had nothing to do with that. I am taking care of the defendants' case.

Mr. Carnes: That was our information from the clerk that no one else, no other department would possibly be open until 10:00 o'clock tomorrow morning.

The Court: Is there any documentary showing to be made?

Mr. Carnes: We can bring in the County Clerk and some files.

The Court: Well, how much time would it save us to go ahead with what you have available?

Mr. Carnes: Well, I don't suppose we would spend more than 15 minutes or so.

The Court: There is one witness here.

Mr. Wirin: In that connection there is this other matter I would like to call to the Court's attention. While it may be that the plaintiff has some witnesses ready it would be a very great inconvenience to me and I would very much prefer if evidence were not adduced until my clients were here so that I would be in a position to cross examine [fol. 134] more intelligently and more thoroughly than I would be without his being here. As I said, as a matter of fact, he has not been in the State of California for some years—since the evacuation—and I want an opportunity to confer with him in preparation of the case.

There is another feature of the case which may require time on the part of the Court and perhaps also of counsel. There are some law questions in the case which will come up upon the beginning of the case when the plaintiff offers testimony, and in the course of the case, law questions which are reflected by a brief which we have filed and by an opinion which Judge Haines has filed and I didn't want to launch into a discussion of those problems. Also it may be that the Court may find it worth while to read the memorandum and Judge Haines' opinion as a kind of background, if it desires. Then we might spend some time in oral argument.

The Court: Well, I never have been in the habit of developing a background before I try a case. It seems to me that when these legal questions arise that we can meet them as we come to them. If we don't get started with the trial we will never get to the legal problems. Now, being entirely ignorant of the situation, you may be right. I think we ought to go ahead with what evidence we have and conserve our time. We have a backlog of many, many cases set for trial in this court. It seems to me we ought to use [fol. 135] all the time we have available to expedite the matter.

Mr. Wirin: I don't want to be in the position of delaying the Court. If the Court feels or desires that it ought to proceed with the witnesses available, all right.

The Court: I think so, don't you? Now, as a matter of fact, I think that if we can get rid of one witness and some

of the documentary proof that we had better do it. It might just turn out that it would result in a convenience to you toward the end of the case.

Mr. Wirin: May I answer the Court's question? The Court asked what I really thought and I would like to answer the Court's inquiry.

It happens that there are questions of law which will arise in the case immediately upon the production of a witness on behalf ~~or~~ of the plaintiff. At that time we intend to object to the introduction of any evidence on the ground that the complaint does not state a cause of action.

Now, it happens, also, that the grounds to be urged by the defendants at that time—and that would be in a couple of moments if a witness were called—are the grounds which have been set forth in a demurrer, the grounds which have been argued in the memorandum and grounds which have been passed upon, in part, at least, by Judge Haines, so it may be that it is idle to try to anticipate matters in the course of a trial. However, from my knowledge of this case I do expect those questions will be in the case and if your [fol. 136] Honor prefers to go ahead with the case in the orderly manner and to meet the law problems as they arise, we will do it.

The Court: These problems have been passed on by Judge Haines?

Mr. Wirin: They have been passed upon in part by Judge Haines:

The Court: If they have been passed on by Judge Haines in the presentation of a demurrer, unless he reserved to you the right to again present them in the trial court, I think these matters are settled. Am I incorrect about that?

Mr. Wirin: I don't want to say you are incorrect. I don't agree. The reason I don't agree is as follows: I think, despite the ruling of the Judge on motion or demurrers, whether or not a complaint states a cause of action is a question which can be raised before the trial court on the trial. It is a question which the trial judge, in trying the case, must determine on his own and may not merely rely upon a ruling made on demurrers in a preliminary proceeding of the case. I may be mistaken about that but I have always so thought. In other words, the question as to whether or not the complaint states a cause of action is a question which can always be raised—not always, but which can seasonably be raised, at least, before any

evidence is introduced in support of the complaint. I have that opinion and it is my view that the trial court is confronted with the problem and duty of determining the objections to the introduction of evidence on its merits, that is to say, to determine then, *de novo* and for himself, as a trial judge, whether the complaint does state a cause of action. The mere fact that a judge in another department of the court, a judge of the court, had expressed views upon a demurrer does not foreclose the trial judge in considering questions raised in connection with an objection to the introduction of evidence that the complaint does not state a cause of action:

I appreciate your Honor's reaction. It is a common reaction. It is a reaction which I think I would have at first blush in the matter.

This matter also, if I may say so, is one of considerable consequence, not only because every lawyer thinks his case is of consequence, but it is a question which these defendants hope to get a ruling on, not only from this court but from the higher court. It is a question which, either in this case or some appropriate case, will call for a decision by the higher courts. Indeed one of these cases has been submitted to the Supreme Court.

The Court: Now, all of that is of no moment here at all. Every case we try should be tried in the best manner and with full recognition of the necessity of giving every litigant his rights and whether it is going to the Appellate Court or any other court makes no difference at all. I think we should try the case as best we can without regard [fol. 138] for the possible destiny of the case. I am not interested in that end of it.

Mr. Wirin: I shan't mention it any more.

The Court: All right. We may then go ahead with what we have.

Mr. Carnes: I would like, first, to call Mr. McLees, the County Clerk; to bring in his files. He is already to testify.

Mr. Mattoon: May it please the Court, we find it very helpful to file the existing provisions of the Alien Land Law as they are amended up to date and for that purpose we have made up a little multigraphed pamphlet. If it will be of any assistance to the Court I have an extra copy and will be glad to submit it.

Mr. Wirin: We are glad to submit any information to the Court from any source.

The Court: Gentlemen, I would appreciate a statement as to your cause or causes of action. I haven't had the opportunity of reading the pleadings.

Mr. Carnes: Very well. This is an action filed under the provisions of the Alien Property Initiative Act of 1920, sometimes called the Alien Land Law.

The gravamen of the action is the acquiring of real property by the defendant, Kajiro Oyama and his wife, Kohide Oyama, who are citizens of Japan. The record title to the property described in the first cause of action was taken [fol. 139] in the name of their minor son, Fred Oyama. There was a guardianship proceeding in which the father was appointed guardian.

The second cause of action has to do with another and smaller piece of property later acquired. The title to that piece of property is still of record in the name of John Mares, now deceased. His executor has been personally served and defaulted and claims no interest.

The answer claims that both parcels were purchased by the father, Kajiro Oyama, as a gift for the son, Fred Oyama.

The issue of fact in this case is whether the purchase by the alien father, who was himself ineligible to own or hold real estate in California, was done in good faith for the beneficial ownership of his son or whether, as the plaintiff contends, the use of the son's name was a mere subterfuge and the transaction was, in fact, for the benefit of the alien parents. That is the issue in the action.

The answer admits certain allegations which are sometimes difficult to prove in these cases. It expressly admits, in paragraph I of the answer, that the parents Kajiro Oyama and his wife, Kohide Oyama, and an uncle Ririchi Kushino were and each of them was and now is of the Japanese race, natives of the Empire of Japan and citizens and subjects of the Empire of Japan. That is expressly admitted in the answer.

Then it admits that the son, Fred Oyama, Fred Yoshihiro [fol. 140] Oyama is of the Japanese race and was born in San Diego, California, on or about March 23, 1928. We don't dispute the fact of his American birth or citizenship.

Then they allege further—they do not deny that the purchase price was advanced by the alien father, as a gift to the son, and the agricultural character of this land is admitted.

A few moments ago Mr. Wirin agreed that two minor corrections may be made to the pleadings by interlineation. In the defendants' answer at page 2, Paragraph III, line 12—

The Court: Page 2?

Mr. Carnes: Page 2 of the answer, your Honor. After the words "Kahiro Oyama" insert the words "and Kohide Oyama".

The other correction is on page 2 of the Plaintiff's petition paragraph III, line 21, after the words "United States" add "nor was there on December 9, 1920".

Mr. Mattoon: That being the date the Alien Land Law took effect.

The Court: Give me the wording again.

Mr. Carnes: "Nor was there on December 9, 1920."

The Court: Apparently some language has been stricken.

Mr. Carnes: No, your Honor.

The Court: That is followed by the language "nor has there ever been any such treaty—"

Mr. Carnes: Yes.

The Court: All right.

[fol. 141] Mr. Wirin: Will the Court permit me to make a short statement about the defendants' position?

The Court: If they have completed.

Mr. Wirin: I thought they had.

The Court: These corrections—you agree to this application?

Mr. Wirin: We stipulated to it.

Mr. Mattoon: Might I supplement what Mr. Carnes has said, just briefly, your Honor?

The Court: Yes.

Mr. Mattoon: This is purely introductory. The Court's attention was called to the fact that the grantee in the purported deed was a minor of American birth and hence an American citizen, and at that time eight years of age; that a petition for a guardianship was filed with the court in the regular fashion and a guardian was appointed. That should be supplemented by the statement that never has there been a report filed, as required by the Alien Land Law, showing the various facts enumerated in Section 5 of the Alien Land Law which requires—that is on page 4 of the pamphlet—which requires an annual report to be filed in the office of the County Clerk setting forth a description of the real property, the date it was acquired, an itemized

account of the expenditures, investments, rents, issues and profits in respect to the administration and so forth.

I believe that should have been mentioned in addition [fol. 142] to the fact that the guardianship was granted.

The other point, if the Court will turn to page 10, upon which is Section 9 of the Alien Land Law—this is shown as amended in 1945, but in the particular I mention it is identical to the amendment of 1923—it is found that upon proof that the title to the land was acquired by one person and the consideration therefore for the acquisition was paid by another ineligible to become a citizen, there is a *prima facie* presumption arising that the conveyance was made with the intent to evade and to violate or void the provisions of the Alien Land Law. That presumption arises in line 14—"On taking up property in the name of a person other than the persons mentioned in Section 2 thereof—". In other words, taken in the name of a citizen—"and consideration paid by the ineligible alien gives rise to this presumption."

Mr. Carnes mentioned the fact that in the answer of the defendants, on page 2, line 25, it is openly admitted that the father furnished the funds and credit to purchase the property, but he did it as a gift to a child. Now, the presumption arises, by the admission of this fact—the burden being upon them to demonstrate that it was a *bona fide* transaction and that it actually took place.

The Court: All right.

Mr. Wirin: So far as the defendants are concerned, Mr. Carnes has made quite a fair statement of the issues and [fol. 143] I have no particular quarrel with Mr. Mattoon's statement. I suppose I should perhaps state it a little bit differently, as every partisan states his case a little more favorable than one objecting would state it.

So far as we are concerned we claim, and we admit, that the central factual issue is the intent of the father. We claim that the law is, and I think there is no dispute about that as there happened to be two decisions which are decisions squarely on the point—that despite the fact that an alien of Japanese descent may not own real estate, real property, however, none the less, if he acts in good faith, may make a gift to anyone, particularly his minor child or children, and if the transaction is in good faith then there has been no violation of the Alien Land Law.

Would your Honor care to have the references to those two cases at this time?

The Court: No, I think not. What I want now is a general statement.

Mr. Wirin: It is true that in this case the father applied for guardianship proceedings and in those proceedings he was duly appointed the guardian and certain transactions were conducted by him, we claim as guardian for the benefit of the son and they were presented to the Court and it was approved by the Court. We say that so far as the law is concerned no guardianship need be taken, and it is purely a matter which may be taken by the alien, if he de-
[fol. 144] sires it. The central question is the question of the good or bad faith. In other words, if an alien of Japanese descent in good faith wants to make a gift of the property to his son he may do so without applying for guardianship proceedings, as submitted under the Alien Land Law. However, he may apply for guardianship proceedings if he wants to. We claim that the obligation was made and that certain matters, certain steps were taken which were approved by the Court and they constitute some evidence of the good faith of the father so far as his relationship with the son is concerned.

Now, we think the law is that the fact that the father continued to manage the property, continued to be in possession in a sense of managing it providing the management is for the benefit of the son, does not, certainly of itself, constitute evidence of fraud or evidence of the lack of good faith, and decisions, at least one decision of the Supreme Court, seems to be to that effect.

We say that the law is that not only possession by the father and management but, for instance, where checks are written by the father—in one of the cases checks were written by the father—the trial court found that the transaction was in good faith and the Supreme Court upheld their judgment.

There probably will be some evidence in this case, unquestionably on the part of the plaintiff, and also on the part of the defendants, of the management of the property and
[fol. 145] custody or control of the property by the father, but, as we shall claim, wholly and entirely subordinate to the rights of the son. We also think that the law is that a guardianship may be taken for a minor even though the guardian is an ineligible alien and even though the one

who is the beneficiary of the guardianship estate is a son of the ineligible alien. We think the law is—I hope I am not anticipating law questions—that the taking of the property in the name of a minor, in good faith, vests title in and to the property in the name of the minor.

Of course, in this case there is the additional fact that the vesting of title, as we shall undertake, was approved by this court, by a judge of this court, because the transfers of the property were reflected in the guardianship proceedings and had the approval of the court.

By way of finality, we think the central situation is the good or bad faith of the transaction. We concede that under the statute there is a presumption and we admit that the burden is upon us to overcome the presumption and we hope to be able to overcome that presumption.

The Court: Very well.

Mr. Carnes: Mr. Kurfurst, will you take the stand.

[fol. 146] JOHN C. KURFURST, called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carnes:

Q. Your name is John C. Kurfurst?

A. Yes, sir.

Q. Where do you reside?

A. I reside now at Jamul.

Q. Are you acquainted with the Oyama family who owns a farm at Chula Vista, near the present site of the Rohr Aircraft factory?

Mr. Wirin: I would like to make an objection at this time. We object to the introduction of any evidence on the ground that the complaint does not state a cause of action. As an additional ground for the objection we refer to, without restating it now, our grounds set forth in the demurrer which has been on file.

The Court: Overruled, reserving to you the right to move to strike at the appropriate time.

The Witness: Well, I am. I have known him for several years.

By Mr. Carnes:

Q. What members of that family are you acquainted with?

A. Well, with his sister, Mr. and Mrs. Kushino and their [fol. 147] family. They have lived across the street from me for ten years. The children went to school with my children.

Q. Do you know Kajiro Oyama?

A. No, I never heard that name.

Q. Do you know Fred Oyama?

A. Yes. That is the only way I know Mr. Oyama, by Fred. We always called him Fred. Maybe it was because everybody else called him Fred.

Q. Will you state the approximate age of Fred Oyama?

A. Well, I should say—I think he is about my age, fifty-five. You can't tell anything about Japanese people, about their age.

Q. He could be a man who was born in 1899 and is now, therefore, forty-six years old?

A. Oh, I would take him to be older than that, maybe not. I couldn't answer that right.

Q. Did you state that his wife is a sister of Mr. Kushino?

A. That is the way we understood it in the family.

Q. Do you know a minor son of Mr. and Mrs. Oyama?

A. Just a little fellow; he was a little fellow when we knew him, about seven or eight years old. Then they moved to Capistrano, so we did not know much about them.

Q. When did you first become acquainted with the family?

A. About 1932, I believe; '31 or '32. I couldn't verify [fol. 148] that.

Q. How long have you known the Kushino family?

A. From that time.

Q. About when did the Oyama family move to—move from Chula Vista?

A. I couldn't answer that. I am not sure.

Q. Can you state approximately?

A. No, sir.

Q. Will you state, if you know, who was occupying the property in the spring of 1942 when the people of Japanese ancestry were required to leave the State of California?

Mr. Wirin: Now, we object to that as calling for a legal conclusion and problem. The question of occupation is

primarily a question of law. We have no objection to a description of what he saw.

The Court: Sustained.

By Mr. Carnes:

Q. Were you familiar with the property in the spring of 1942?

A. Yes, sir.

Q. Do you know who was living on the premises then?

A. The Kushino family.

Q. And who did that family consist of?

A. Well, I couldn't name the children; about five or six in the family. June was the oldest, that I did business [fol. 149] with. She turned the property over to me the day of the evacuation, the day they had to leave, because the fathers were going and the kids didn't have no one to turn the stuff over to; so I just agreed to help them out. That is all.

Q. How old was June Kushino at that time?

A. She must have been—I am sorry I couldn't say—she must have been about 18 years old. She is a couple of years ahead of my daughter and that is the reason I could keep track of it. I couldn't verify the age.

Q. You state that she left you in charge of the place?

A. Yes.

The Court: Here is Mr. McLees.

Mr. Wirin: We have no objection to your putting him on out of order.

~~Mr. Carnes: Mr. Kurfurst, kindly step down for a moment.~~

(Witness temporarily excused.)

Mr. Carnes: Mr. McLees.

J. B. McLEES, a witness called for and on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carnes:

Q. Your name is J. B. McLees?

A. Beg pardon, sir?

Q. Your name is J. B. McLees?

[fol. 150] A. Yes.

Q. And you are the County Clerk and ex-officio Clerk of the Superior Court?

A. Yes, sir.

Q. I will ask you if, among the records of the Superior Court—

Mr. Wirin: I am willing, to save time, to eliminate the preliminary questions. If you want the records offered I probably will agree to it, if it is agreeable to the Court.

The Court: Surely.

Mr. Carnes: May it be stipulated that Probate file No. 22060, in the Guardianship of Fred Yoshihiro Oyama, a minor, may be introduced in evidence?

Mr. Wirin: No objection.

Mr. Carnes: Is it further stipulated that the file, No. 24654, Guardianship of June Kushino, a minor, may be introduced in evidence?

Mr. Wirin: No objection. I only have this word: It isn't my primary concern, but the original records—copies may be furnished, perhaps, for this record by the plaintiff, the State of California.

Mr. Carnes: If it comes to an appeal I believe certified copies can be substituted.

The Court: Yes.

Mr. Carnes: I believe the practice is to offer the original files in evidence. It is competent evidence.

[fol. 151] Mr. Wirin: We have no objection.

The Court: Then they may be received.

(File No. 22060 received in evidence and marked Plaintiff's Exhibit No. 1.)

(File No. 24654 received in evidence and marked Plaintiff's Exhibit No. 2.)

By Mr. Carnes:

Q. Mr. McLees, I would like to ask you further. You have in your custody certain reports which are filed, in duplicate with the Secretary of State and the County Clerk, by trustees, guardians, and agents concerning property or an interest therein, belonging to aliens mentioned in Section 2 of the Alien Property Initiative Act of 1920, and minor children of such?

A. Yes.

Q. I will now ask you whether you examined your records so ascertain whether or not there has been filed with you such a report by or concerning the defendant, Kajiro Oyama?

A. There has not.

Q. I ask the same question concerning the defendant Fred Yoshihiro Oyama?

A. There has not.

Q. And the defendant Ririchi Kushino?

A. There has not.

Q. And the defendant June Kushino?

[fol. 152] A. There has not.

Mr. Carnes: That is all, Mr. McLees.

Mr. Wirin: No questions.

The Court: Thank you, Mr. McLees.

(Witness excused.)

JOHN C. KURFURST, a witness previously called and sworn as a witness on behalf of the plaintiff, resumed the stand and further testified as follows:

Direct examination (Continued).

By Mr. Carnes:

Q. After you took charge of this property, Mr. Kurfurst, did you make any payments to any of the Kushinos or to the Oyamas?

A. I didn't make no payment until '43. I kept everything in together in my own bank account until Mr. Oakley, from Los Angeles, come over from the Reclamation Center to get it straightened up.

Q. What was the first of the payments; that is, did you occupy the land yourself?

A. No.

Q. Or rent it out?

A. Rented it out.

Q. To whom did you rent it?

A. First to Mr. Darrow—I can give you the accounts [fol. 153] here—I turned it over to Mr. Darrow June 20th. He left on April 8th and I turned it over to Mr. Darrow from June 20th to August 20th to clean the place up and

paint it—that is outside and inside—and clean it up, free of rent.

Then I collected rent from August 20th to September, in cash—September 20th—and I gave Darrow \$25.00 allowance for cleaning the septic tank. I couldn't get a septic tank man to clean it. It was filled up.

Then from then on Darrow left and I rented it to Jim Vine. I collected rent from Jim Vine until December 20, 1944.

Q. That was—

A. Wait a minute, I am sorry. I have got another letter here. That is just the records in here. Here it is right here. I collected \$100.00 for 1945 and \$420.00 for the rent of the ground to Schertzer, and I kept out \$84.00 for my own work, to worry about it, and gave Fred Oyama a sixteen dollar check. Out of that \$420.00 I — taken out \$84.00. I have the checks here, the cancelled checks to show for it. They are somewhere here—I had so much darned grief with the property from the O.P.A. and everything. That is the last of the payments I received.

There is a check for \$16.00 out of the \$100.00 and my first check was \$330.00 and then Mr. Schertzer, I had him make a check for the \$40.00 an acre direct. The last two checks Schertzer made him direct.

[fol. 154] Q. These two payments of \$330.34 dated February 10, 1944, and \$16.00 dated April 8, 1944, were the payments which you transmitted?

A. Yes. And this here. I turned that over in April and Schertzer's check—I had Schertzer make a check direct to Fred Oyama. That is the receipt I got from Mr. Oakley. That is what is his—Harry Oakley, War Reclamation Authority from Los Angeles. I paid direct to him.

Q. That was—

A. This is for the house. This is for the house. Then the rent for the soil was paid out by Mr. Schertzer. It is funny you haven't got him here.

Q. He was here this morning.

A. I am sorry I made the wrong cue. We had this straightened up. That is the letter I got. Here is another letter from Chino, and here is what she gave me when she left, June Kushino.

Q. Do you know which member of the family Shigeko is?

A. No, I don't. I wrote to her afterwards and told her I would keep the money, as it was needed—a new septic

tank and a cesspool—but we didn't have to do it. We just cleaned it out.

Mr. Carnes: We offer as Plaintiff's Exhibit first in order a photostatic copy, first of a check in favor of Fred Oyama, [fol. 155] signed E. Rosemond Kurfurst, dated February 10, 1944, bearing the endorsement "Fred Oyama" on the back.

The Witness: That is my wife.

The Court: It may be received as Plaintiff's Exhibit 3.

(Photostatic copy of check received in evidence and marked Plaintiff's Exhibit No. 3.)

Mr. Carnes: We also offer in evidence as Plaintiff's Exhibit 4 a photostatic copy of a check dated April 8, 1944, signed "John C. Kurfurst" to Fred Oyama showing the endorsement "Fred Oyama" on the back.

The Court: It will be received as Plaintiff's Exhibit No. 4.

(Photostatic copy of check received in evidence and marked Plaintiff's Exhibit No. 4.)

By Mr. Carnes:

Q. I show you this. You state that this document was given to you by June Kushino?

A. Yes.

Q. At the time—

A. She were evacuating.

The Court: You are not making a very good record, Mr. Carnes. Wait until Mr. Carnes finishes his question before you answer.

The Witness: I am sorry.

[fol. 156] By Mr. Carnes:

Q. I show you a document signed "Shigeko Oyama by June Kushino," which document reads:

"I, Shigeko Oyama, do hereby give Mr. John Kurfurst the power of attorney to act as the agent over my property consisting of house and garage, china closet, one bed, bureau, sofa and easy chair, dining room table, four chairs.

"If in case the house is rented, the money should be deposited at Security Trust & Savings Bank of Chula Vista.

"Arrangements should be made with Mr. Kurfurst on the matter of money, date of payment, etc."

We offer this document in evidence as Plaintiff's Exhibit 5.

The Court: It may be received as Plaintiff's Exhibit 5.
(Document received in evidence and marked Plaintiff's Exhibit No. 5.)

By Mr. Carnes:

Q. Mr. Kurfurst, I show you a photostatic copy of a letter dated June 7, 1944, signed "Fred Oyama" addressed to you and reading:

"I wish to advise you that I am turning over the management of the property to Mr. Kelly of the Security Trust & Savings Bank and I have turned over all [fol. 157] authority to him.

"I want to thank you for all the time and effort spent on your part in managing the property."

I wish to offer the photostatic copy of the letter from Fred Oyama to John C. Kurfurst, dated June 7, 1944, as Plaintiff's Exhibit next in order.

Mr. Wirin: We have no objection.

The Court: It will be received as Plaintiff's Exhibit 6.
(Letter dated June 7, 1944 received in evidence and marked Plaintiff's Exhibit No. 6.)

Mr. Wirin: I assume it is photostated from the original which at one time you had?

Mr. Carnes: That is correct.

The Court: Received as Plaintiff's Exhibit 6.

By Mr. Carnes:

Q. Now, Mr. Kurfurst, you state that the father of the family was known to you as Fred Oyama?

A. That is the way I knew him.

Q. Did you ever hear him refer to himself by that name?

A. No, sir, I didn't.

Q. You did not?

A. He never told me his name, but that is the way we called him. That is the way I wrote the checks. He gave me a check at one time for labor but I cannot remember or [fol. 158] state the fact that he signed his name "Fred" or not, I couldn't tell you that.

Q. Did he sign it himself?

A. Well, he wrote me a check right in the field but I couldn't tell you how he signed it or nothing. But he paid me for tractor work.

Q. Were you living in that neighborhood in August, 1934?

A. Which neighborhood?

Q. In August, 1934 were you living in that neighborhood?

A. Yes.

Q. And in December, 1937 were you living in that neighborhood?

A. Yes, sir.

Q. You state that both the Oyamas and the Kushinos moved into the neighborhood about 1932?

A. Somewhere in that neighborhood.

Q. And—

A. I don't know if they lived in that same place or not, but they lived in Chula Vista. The Kushinos lived across the street from me about that time.

Q. Did the Kushinos continue—You stated the Kushinos were living on the Oyama place?

A. During the evacuation.

Q. In 1942?

[fol. 159] A. Yes.

Q. And you don't know even approximately how long they lived there?

A. No, I don't.

Q. What was the address in Chula Vista at the time?

A. I couldn't tell.

Q. What street?

A. I lived on J Street—that is when they moved out—but when they lived across the street from me they lived on F, the corner of F and National in Mrs. Mathew's place.

Q. That is the Kushinos?

A. Yes. They lived there for several years.

Q. Then they moved on to—

A. No, they moved to Castle Park after that and then to the Oyama place, but I don't know where in Castle Park.

Q. Did you handle any more money or rentals for the Oyamas or the Kushinos?

A. Not after that.

Q. Any in addition to the money which you transmitted by the two checks which are in evidence?

A. Well, I collected Schertzer's check and mailed it to him, mailed to this Mr. Oakley, but in Fred Oyama's name and had him make it direct. There was two checks from Mr. Schertzer. I am pretty sure that they were made direct.

Q. Do you know what use the Kushinos were making of [fol. 160] the property at the time they left?

A. Nothing whatever. There was lemon orange grove there they were digging out and I pulled it out. They turned it over to me for a year to pull it out. I pulled it out and then rented it to Schertzer for \$240.00. It cost me over \$300.00 to clean it, and I broke an ankle at that time, doing it, and I had to give it up. I was going to cultivate it myself.

Q. The lemon trees were pulled out after the evacuation?

A. After the evacuation, yes. They gave me one year's rent free for cleaning the ground up and putting it in shape.

Q. Who was it who made that arrangement with you?

A. I have a letter here from Mr. Oyama—I am pretty sure—if I can find which one it is—or else Kushino wrote to me in regard to it.

Q. Were you on the place at all when the Oyama family lived there?

A. Never.

Mr. Carnes: I believe that is all.

Mr. Wirin: May I, with the Court's indulgence, and perhaps as a special courtesy, forego cross-examination until the morning? I don't anticipate my cross-examination will be extended in any event. As I have said to your Honor—I didn't say this, as a matter of fact—my files are in my hotel room when I anticipated, from what took place [fol. 161] this morning that there would be no hearing today. Also, frankly, I am expecting Mr. Oyama in San Diego this evening and I want to talk to him and I anticipate we can proceed tomorrow morning without any delay.

The Court: The only difficulty is that it would require him to return.

Mr. Wirin: May we ask him about it? Could you come back tomorrow without a great deal of inconvenience?

The Witness: I am working 14 hours a day and I have 56 acres to take care of and I broke away to come here. I have lost too much time trying to collect the rent and everything. I wouldn't do it for nobody, not even my own brother, any more. I wouldn't.

Mr. Wirin: Perhaps we could have a short recess. Maybe he has some papers that I could look at.

The Court: Yes. We will take a short recess.

(Short recess.)

Mr. Wirin: We will proceed with the examination of the witness, if your Honor please.

The Court: All right.

Cross-examination.

By Mr. Wirin:

Q. Now, Mr. Kurfurst, have you ever talked to me before you met me here in the courtroom this afternoon?

A. No, sir.

[fol. 162] Q. Have you ever had any correspondence with me or dealings with me before?

A. No.

Q. You were subpoenaed by the other side?

A. By the Court—rather the Sheriff's office, I guess.

Q. Now, have you ever—can you hear me?

A. I am hard of hearing on my right ear.

Q. If you have difficulty in hearing me let me know. Have you ever had any conversation, before the evacuation, with the old man Oyama, the middle aged man, about the property and whose property it was? Have you had such a conversation?

A. Not personally. I heard that in the garage, May's Garage—that is P. E. May's Garage on National and University. He said "Some day the boy will have a good piece of property because that is going to be valuable." That is all I know about it because the Oyamas did a lot of business and we were next door and we were there all the time, anyway.

Q. As a result of your dealings with the old man whose property did you understand the property was?

Mr. Barnes: That is objected to as calling for an opinion and conclusion of the witness.

Mr. Wirin: It is cross-examination, your Honor.
The Court: Sustained.

[fol. 163] By Mr. Wirin:

Q. Did you ever have any conversation with the old man Oyama?

A. Never did; just dealings—in business dealings.

Q. Wait. Did you ever have any talk with him? Did he ever say anything to you as to whose property this was?

A. No. Not to me. I just overheard it in the garage.

Q. You overheard it? You hear Oyama make that statement?

A. He told May, "That piece of property is going to be very valuable", and he referred to his boy. That is all I know.

Q. Now, what was it that you heard him say about the property and the boy at the time you overheard the conversation with Mr. May?

A. I would hate to state that because we were over-hauling a truck, my boy and I in the garage, in May's garage. I couldn't tell you just what—how we overheard it—but I overheard that. That is all I know.

Q. Yes. What else, if anything, did you overhear? What if anything did you overhear the old man Oyama say as to whose property this was?

A. Well, he didn't say whose property it was. He just said, "Some day it will be valuable. The kid will have a good piece of property." That is all. When you are not interested you don't remember. You don't remember when [fol. 164] you are not interested in the thing.

Q. Now, I call your attention to a copy of a letter which came from your files and which was addressed to Mr. Oakley, Evacuee Property Supervisor at Los Angeles, re: Fred Yoshihiro Oyama and June Kushino, did you send a letter of which this is a copy, to Mr. Oakley in connection with these matters?

A. Yes.

Q. I call your attention "re: Fred Yoshihiro Oyama" and underneath it "June Kushino."

A. It is the two kids, those are supposed to be.

Q. It was pertaining to these two kids?

A. Pardon me. It was not the kids—Fred Oyama, Jr.—it was just the same as the old man. I don't know.

Q. And in any event you were referring to the two kids when you wrote this letter?

A. That is all. We were doing business with June.

Q. June was the kid?

A. Yes.

Q. And Fred Yoshihiro Oyama was the boy?

A. Yes.

Q. The young boy?

A. That was June's cousin.

Q. How old was Fred Y. Oyama at that time?

A. I haven't seen him since he was eight years old.

Q. He is a young boy now?

[fol. 165]. A. I don't know anything about him.

Mr. Wirin: Now, we would like to offer this in evidence.

Mr. Carnes: No objection.

The Court: It may be received as Defendants' Exhibit A.

(Copy of Letter received in evidence and marked Defendants' Exhibit A.)

By Mr. Wirin:

Q. Now, did you receive a letter, which I now show you, which is dated February 14, 1944, from the War Relocation Authority, Evacuee Property Supervisor, a Mr. Oakley, Evacuee Property Supervisor, re: Fred Yoshihiro Oyama and June Kushino?

A. Yes.

Q. That is pertaining to the two kids, is it not?

A. Yes.

Mr. Wirin: We will offer this in evidence,

Mr. Carnes: No objection, your Honor.

The Court: It may be received as Defendants' Exhibit B.

(Copy of letter dated February 14, 1944 received in evidence and marked Defendants' Exhibit B.)

By Mr. Wirin:

Q. Did you receive this letter from June Kushino dated November 16, 1942, from Poston, Arizona, addressed to [fol. 166] you?

A. Yes.

Q. And do you recognize her handwriting? Do you recognize her writing as the writing of June Kushino?

A. I am not an authority on that.

Q. You received it?

A. It is from her, anyway. That is the way we got it.

Q. June Kushino is the young girl?

A. Yes.

Mr. Wirin: We offer this in evidence.

Mr. Carnes: No objection.

The Court: It is received as Defendants' Exhibit C.

(Letter received in evidence and marked Defendants' Exhibit C.)

By Mr. Wirin:

Q. In this letter from June Kushino—that is the young daughter—Did you notice that she asks you to pay something for certain furniture?

A. No.

Q. "If the furniture has not yet been taken, please pay it out of the rent money—"

A. That was taxes. The Tax Collector was going to come over and take it out. I didn't want to take it out until I wrote to them and he said he was coming back but he never did, so it never was paid.

[fol. 167] Q. You got this letter from June Kushino telling you what to do about it?

A. Yes.

Q. June Kushino is the young girl?

A. Yes.

Mr. Wirin: The reason for my offering this is to show that he was communicating about what she said was her property, as a personal matter and that there was nothing confidential about the situation.

By Mr. Wirin:

Q. Did you at any time hear the father say that he was managing the property for the boy?

A. No, I didn't.

Q. Did you at any time hear him say that he was guardian for the boy or that there was a guardianship proceeding?

A. No, I don't think I ever did.

Q. Did you tell me when we were having a little visit that you understood that the father was acting as guardian for the boy?

A. Well, the Japanese aliens have to have guardians or somebody has to be guardians. We know that automatically.

Q. You knew that the father was guardian for the boy?

A. Well, I wasn't sure, no. I better not say that because I am not sure of that, but I know he was running his business.

[fol. 168] Q. You knew that the father was running the boy's business?

A. Yes, sir.

Q. And you told me that during—

A. But that was when he was here.

Q. —during our little visit?

A. Whether he was guardian by the court or not, I don't know.

Q. You told me that during our visit during the court recess?

A. Yes, because we knew that:

Q. That the property was the boy's property being run for the boy by the father?

A. Yes, it belonged to him and June Kushino. She just had an acre or two in the eight acres.

Q. The property belonged to the boy and June Kushino?

A. Yes. I think it was two acres.

Q. You knew that all along in your dealings with the Oyama and Kushino families?

A. Yes. I think the two acres with the house belong to June and the other belongs to Oyama.

Q. You made out checks to Fred Oyama, didn't you?

A. Yes.

Q. And your correspondence with the War Relocation Authority was pertaining to Fred Oyama?

A. Yes.

[fol. 169] Q. And is this a letter which you received from Harry R. Oakley of the War Relocation Authority addressed to you, in re: Fred Oyama?

A. Yes.

Q. And pertaining to the two receipts, the one for \$330 and the other \$16.00?

A. Yes.

Q. And the receipts made out by the War Relocation Authority to you were in the name of Fred Oyama?

A. Yes, sir.

Q. For rental on Fred Oyama's eight acres at Bay Boulevard and J Streets, Chula Vista, for a certain period?

A. Yes.

Q. And when you received this letter you saw that it said here "For account of Fred Oyama?"

A. Yes.

Q. And that is true also of the receipt which you received from Oakley pertaining to \$330.34?

A. That was the rent for the dwelling.

Q. For the account of Fred Oyama?

A. Yes.

Mr. Wirin: We will offer these documents.

Mr. Carnes: No objection.

The Court: They may be received, the two of them, I take it as one document?

Mr. Wirin: If you would rather.

[fol. 170] The Court: Very well. They will be received as Defendants' Exhibit D.

(Receipts received in evidence and marked Defendants' Exhibit D.)

Mr. Wirin: That closes my cross-examination, your Honor.

Redirect examination.

By Mr. Carnes:

Q. Mr. Kurfurst, on your direct examination you stated that you knew the father as Fred Oyama?

A. Yes.

Q. But did not know what the boy's name was?

A. Well, he is Junior; that is all I know, Junior Oyama. That is, I didn't know the boy because he was only eight years old when I saw him last; a little fellow. They moved to Capistrano so we had no contact with them very much.

Q. You stated that you knew—in cross-examination—that you knew that the girl, June Kushino, was the owner of part of the property. Will you state what you know about the ownership of that property and how you know it?

A. Well, I can't just say—it was through them—June has two acres in the property. I think it is right where the house is, because she had the household things and everything, but it was eight acres in the tract and June had two [fol. 171] acres, an acre and a half or two acres, the dwelling part, because I know she was interested in it, but

whether it is on record in June's name or not, I don't know. That is just hearsay, through them, is all.

Q. What members of the family talked to you about that ownership?

A. June.

Q. June?

A. Yes.

Q. Did she ask you to send her any of the rent?

A. No, send it all to Oyama.

Q. That was at her request?

A. Yes.

Mr. Carnes: That is all.

Recross-examination.

By Mr. Wirlin:

Q. You meant, by June Kushino, you meant the daughter?

A. The daughter of R. Kushino, yes. That is the brother-in-law to Oyama.

Q. When you wrote to Mr. Oakley of the War Relocation Authority in connection with this property and you used—I think I asked this but I want to make it clear—you used the words up here: "Fred Yoshihiro Oyama and June Kushino" and you were referring to the young boy, the kids?

A. The kids, supposed to be.

[fol. 172] Q. Irrespective of the spelling or the pronunciation you were referring to the boy and the girl?

A. Well, we did business through the girl, mostly, and, of course, it was for the two kids, I guess. But the checks, the way I understood, I made the checks to Fred.

Q. Fred Oyama?

A. Fred Oyama. Whether it was the old man or the young fellow, I didn't know who was who, but that was the way it was requested to me, through this Mr. Oakley.

Q. But the reference which you made in this letter of April 8, which is Defendants' Exhibit A, was to the two kids?

A. Yes.

Mr. Wirlin: Now, I am through.

The Court: Let me see Plaintiff's Exhibits 3 and 4.

Examine Plaintiff's 3 there with reference to the en-

dorsement, the part of the photostat that shows the endorsement. Are you familiar with that signature?

The Witness: Yes. That is my wife's signature.

The Court: No, no. On this side.

The Witness: No, I am not. I don't know who signed it, whether the boy signed it or Mr. Oyama. I don't know that.

The Court: All right.

The Witness: I couldn't verify either one of them.

[fol. 173] The Court: Is there anything further from this witness? Mr. Carnes: That is all.

The Court: Can't he be excused with the understanding that if it becomes necessary for you to recall him you can do so?

The Witness: You can call me by phone.

Mr. Wirin: Yes. That will be satisfactory. Some arrangements will be made for the return of those other documents if he wants them.

(Witness excused.)

Mr. Carnes: Your Honor, I would suggest, in as much as the other witnesses were excused until 10:00 o'clock tomorrow, that we recess until that time.

The Court: You have nothing else available?

Mr. Carnes: No, your Honor.

Mr. Wirin: That is entirely agreeable.

The Court: We will adjourn until 10:00 o'clock in the morning.

(Adjournment until 10:00 A. M. Wednesday, August 22, 1945.)

[fol. 174] San Diego, California, Wednesday, August 22, 1945; 10:00 A. M.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: People against Oyama.

Mr. Carnes: If the Court please, I believe, from the statement made by Mr. Wirin that the defendant Oyama is somewhere in the city, or somewhere in the building, I would like to call him under Section 2055 of the Code of Civil Procedure. I would like to make an inquiry of Mr. Wirin whether he is available for that purpose.

Mr. Wirin: May I state to the Court that Mr. Oyama is here. I have talked to him or attempted to talk to him and I discovered that he speaks very little English and understands very little English. As a matter of fact, he was here this morning and I advised him to go and try to find someone who can interpret.

The defendant Oyama has not been subpoenaed by the People, and so far as I am concerned, unless the Court advises to the contrary, he is under no obligation to be here. I have no intention of having him here until I need him in the presentation of my case, and I am not certain whether that will be necessary nor have I determined what I should do about it. This is the first information by anyone on behalf of the plaintiff that the defendant was needed as a witness for the plaintiff. This cause has been pending approximately a year and no effort has been made to take the deposition of the defendant. A deposition ~~can~~ [fol. 175] be taken. To be sure, he was not living in California, but there is a legal process for the taking of a deposition of a witness out of the state and that has been done in a number of cases, escheat cases by the plaintiff, through the Attorney General.

Mr. Mattoon: Which one?

Mr. Wirin: I understood there was one in Arizona where proceedings were instituted in an appropriate court in Arizona for the taking of the testimony of a defendant or a witness. Irrespective of that fact, certain process has been available to the plaintiff, and, as I say, no request or suggestion or demand has ever been made upon me for the taking of the deposition but, on the contrary, the plaintiff for the last number of months has insisted upon going forward with an immediate trial and has assured me they had ample evidence to go forward and to prove their case. I arranged for Mr. Oyama to come here primarily for my convenience, in order that I might confer with him, and not to produce him as a witness in court unless the defense so determines, after the case of the plaintiff is in. I do not feel, unless the court advises me to the contrary, that there is any obligation to produce the defendant for the plaintiff.

The Court: I cannot require him to be produced unless process has been served on him to require his attendance. I cannot even ask you where he is.

[fol. 176] Mr. Wirin: I have no objection to stating where he is, but in the absence of process I don't feel that I am under obligation to produce him. I hope this discussion will not hurt his case.

The Court: No. The only thing that occurs to me, since this has developed, is that you were urgently insistent upon a continuance of this case until today. Yesterday you did not want to start to trial because your client wasn't here. You wanted him present in court in order that you might properly cross examine the People's witnesses. But that has nothing to do with the determination of the present question at all.

Mr. Wirin: I believe I also stated further, in that connection, that my primary concern, frankly, was to talk to the defendant in order to familiarize myself with the case.

The Court: Now, Mr. Wirin, that was not so. You have changed your attitude since yesterday. You might as well recognize it. Your statement yesterday was that you wished to continue your examination of the People's witness because you wished to have your client in court so that you might properly cross examine the witness. Now, that, was your attitude yesterday and you couldn't do that merely by conference with him outside of court.

Mr. Wirin: Your Honor is correct about that. May I make this further explanation: After attempting to talk to [fol. 177] him and discovering that he understood English so little, I decided that he was of no use to me here in the absence of his having also an interpreter, so I dispensed with his being here because he wasn't the kind of use to me that I thought he would be or that he would be if he were a person who was sitting next to you who understood English and who also understood the facts of the case. However, your statement is correct.

Mr. Carnes: If the Court please, particularly since, and in view of Mr. Wirin's opening statement yesterday, that he agrees on the proposition of law that the obligation of proceeding with evidence arises on the admission by the alien that he furnished the consideration for the purchase of the property, the plaintiff will rest at this time:

Mr. Wirin: May I have a moment to gather my thoughts, your Honor?

MOTION TO STRIKE AND DENIAL THEREOF

We have a motion to make, first. Your Honor will recall that we made objection to the introduction of evidence and the Court overruled the objection, subject to a motion to strike the evidence. We make that motion now on the same grounds stated in the objection to the introduction of evidence and I intend to submit the motion without argument at this time. Probably, in view of the next step I will take, the matter can perhaps also be considered appropriate at a latter stage of the case:

The Court: Very well. Motion will be denied.

[fol. 178] Mr. Wirin: Now, we would like to ask leave of the Court at this time to amend our answer by interpolation. The proposed amendment does not raise any issue that needs the taking of evidence—no factual evidence—and is as follows: At page 3, line 25 of the answer, we would like to add the following sentence or paragraph:

"For an affirmative defense the defendants allege that the plaintiff should not recover because of laches."

That sentence or paragraph—we have already raised the issue of the statute of limitations and the defense of laches is analogous.

The Court: Is there any objection?

Mr. Wirin: We won't argue the matter.

The Court: Very well. There apparently being no objection the amendment will be allowed.

Mr. Wirin: The defendants rest.

The Court: Very well.

Mr. Wirin: Now, we should like to argue the matter and I would like a few moments to organize my material as I think it will be much briefer and more persuasive.

The Court: That will be satisfactory. How much time do you wish?

Mr. Wirin: Ten or fifteen minutes.

The Court: I might say this that it would seem to me, in view of the apparent agreement between counsel as to the [fol. 179] issues and as to the law, that the case will not require an opening argument by the plaintiff. I think the burden is on you now, so you will begin your argument.

Mr. Wirin: I will be ready to carry the laboring oar.

(Short recess.)

(Argument by Mr. Wirin, not reported.)

STATEMENT OF COURT

The Court: Well, counsel for the defendants seems to concede in his argument that in the absence of any evidence at all—if the matter had been submitted upon the agreed statement of facts and of the law,—the judgment would necessarily have been for the plaintiff in the case, but he contends that the evidence introduced by the plaintiff overcomes the presumption which is set out in the statute and I gather his contention to be that the preponderance of evidence is in favor, or rather that the plaintiff has now failed to establish its case by a preponderance of the evidence, the determination of that contention depending entirely upon an interpretation of the exhibits introduced in the trial and the testimony given by the witness Mr. Kurfurst. That is the problem with which I am faced.

In the first place the contention is that the exhibits indicate that there was a complete understanding by everyone involved in the transactions concerning the real property; that all of the business transactions were being done for and on behalf of the minor Fred Oyama and not for and on behalf of the father. The outstanding element in the [fol. 180] evidence of Mr. Kurfurst is, in my opinion, to this effect: That the father also was known by the name of Fred Oyama to those who did business with him in that community, so I can see no inference to be drawn from the exhibits here merely because they were in the name of Fred Oyama, the minor, because there are many instances where there is little in a name. The name that you adopt and are known by is, in effect, your name. There is nothing in law that would prevent me from being known by my own son's name if I wanted to be known by that name and adopted the custom of using it. I know of nothing in law that would prevent me from using it in doing my business, so I know of no reason why we should, or the Court could draw an inference from the use of the name "Fred Oyama" by the father.

Now, in the absence of any evidence that the motives and conduct of a person of Japanese citizenship is any different from that of one of our own citizens, I should draw whatever inferences as to motive that there are to be drawn on the same basis and for the same reasons that I should draw them if the person involved was a white American citizen. In the first place, looking at this situation with reference

to the guardianship matter, it is to be noted that the guardianship proceedings were instituted at a time when the minor, Fred Oyama, was seven, I believe—either seven or eight years of age. Now, in our ordinary dealings we just don't do that sort of thing unless there is a good reason [fol. 181] for it. Why should I, for instance, have taken title to real property in my son's name when he was seven or eight years of age, thereby putting it beyond my power to deal with it directly, to deed it away, to borrow money on it and to make free disposition of it in any other way that I saw fit to do so unless there was a good strong reason why I should do that. We just don't do that sort of thing and people generally do not do that sort of thing. So, rather than to draw the inference that the property was put into the seven year old boy's name in order to provide for a college education for him, or something of that kind, I think that the more reasonable inference to draw would be that there was some other good reason for doing that very thing.

I note that counsel argued that we shouldn't give much, if any consideration, to the fact that the law has not been complied with in the filing of the required reports and accounts. I cannot agree with counsel about that because if good faith was present in the mind of the guardian it is more likely than not that he would have in all respects complied with the requirements of law in connection with the guardianship and his failure to do so probably adds some strength to the theory of the plaintiff in this case—not a great deal because sometimes people who are not informed as to the requirements of the law in connection with those matters simply fail to do the thing that the law requires them to do. The inference is not a strong [fol. 182] one but it is to be noted in passing in connection with counsel's claim that Mr. Oyama, the father here, is not at all familiar with the English language. It is to be noted that there is entirely no evidence to that effect and it is further to be noted that from the testimony of Mr. Kurfurst and the conversation that he overheard between the father and someone else in a garage—Mr. Kurfurst not being familiar with the Japanese language and there being no indication in the evidence that he had any difficulty in understanding the statements made by Mr. Oyama—and the testimony of Mr. Kurfurst being to the effect that Mr. Oyama was the individual with whom business was done in that community, in business done by him and

by others, it seems to me that the contention that he doesn't understand the English language is not supported at all by the evidence in the case. Furthermore there is the theory of law—and of course we are governed in this action by the rules of trial governing civil cases—the father, Mr. Oyama, has not offered himself as a witness in the case, and from his unexplained failure to offer himself as a witness the Court is required, as I understand it, to draw an unfavorable inference. That is, that his testimony would be unfavorable to his case. If I am wrong about that I, of course, wouldn't mind being told that I was wrong, but I think that inference must be drawn from his failure to testify.

I think that the situation we have here about the burden, [fol. 183] however weighty or however slight it may be that is by the Legislation placed upon the alien or placed on the defendant to overcome the presumption is a real presumption and amounts to evidence and that in order for the defendant to successfully defend the case he must either as stated by counsel, either from the lips of the plaintiff's witnesses or from witnesses on his own behalf, develop enough to overcome that presumption and that, in my opinion, he has not done. I think that there is only one way I could determine this matter under this evidence and that would be simply to hold, that the plaintiff has, by the application of the inference, the statutory inference, the presumption, and by the evidence that has been produced here, has maintained the preponderance of evidence and that judgment be for the plaintiff.

Mr. Wirin: May I address the Court a moment?

The Court: Certainly.

Mr. Wirin: I haven't made it clear as to what our position is with respect to the constitutionality of Section 9 and the subdivisions thereunder, pertaining to the statutory presumption.

The Court: I think you should reserve to yourself the right to present that matter if it goes up on appeal. The record should show that those questions and the question as to the statute of limitations and laches should be reserved by you in some way in a statement made for the [fol. 184] record. I have no objection to your doing that at this time.

Mr. Wirin: The defendants have not conceded the constitutionality of Section 9 and the various subdivisions of the Alien Land Law. We challenge the constitutionality as offending due process. That, however, has been passed upon by the highest courts adversely to the claim I am urging and I will therefore not argue the matter before the Court. I do not want to be in the position of having conceded the constitutionality.

I think as to the other matters we can raise them adequately. I don't see the necessity nor do I desire to make any further statement.

The Court: Very well. The plaintiff will prepare findings.

[fol: 185] [Reporter's certificate to foregoing transcript omitted in printing]

[fol. 186] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

ORDER APPROVING TRANSCRIPT—October 20, 1945

In the above entitled cause, the foregoing Reporter's Transcript having been presented to the Court for approval and the Court having examined the same; and,

It appearing that the same is a full, true and fair transcript of the proceedings had at the trial of the said cause, the testimony offered or taken, evidence offered or received, acts and statements of the Court, also all objections of counsel and matters to which the same relate;

The said transcript is a true and correct transcript of said matter, and the same is hereby settled and allowed as the Transcript on Appeal in the above entitled matter.

Done in open court this 20 day of Oct., 1945.

Joe L. Shell, Judge of the Superior Court.

[fol. 187] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA, IN BANK

L. A. 19533

THE PEOPLE OF THE STATE OF CALIFORNIA; Plaintiff and Respondent,

v.

FRED Y. OYAMA, also known as FRED YOSHIIRO OYAMA, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker; as administrator of the estate of John Mares, deceased; George Schertzer; John Kurfurst; Doe One; Doe Two and Doe Three, Defendants and Appellants.

OPINION—Filed October 31, 1946

Principally upon the ground that the United States Supreme Court has changed the constitutional tests applicable to state legislation such as the Alien Land Law (Alien Property Initiative Act of 1920, Stats. 1921, p. lxxxiii, as amended; 1 Deering's Gen. Laws, Act 261), the validity of that statute is again challenged. Another question presented for decision concerns the effect of the recent amendment of the federal law which allows, under certain circumstances, a member of the Japanese race to become a citizen of the United States.

[fol. 188] In the petition filed by the attorney general, he asserted that certain real property, by reason of its conveyance in violation of the Alien Land Law, has escheated to the state. Two causes of action were pleaded. In the first one, it was alleged that Kajiro Oyama, Kohide Oyama, formerly Kohide Kushino, and Ririchi Kushino, are of the Japanese race, natives of the Empire of Japan, and citizens and subjects of that country and, by reason thereof, are not eligible to citizenship under the laws of the United States; that Fred Y. Oyama is the son of Kajiro and Kohide Oyama and is of the Japanese race but was born in California in 1928; and that June Kushino also is of the Japanese race and was born in California in 1921. There has never been a treaty permitting a

native of Japan to acquire an interest in the agricultural land of this country. Since 1935, by appointment of the Superior Court of the State of California, in and for the County of San Diego, Kajiro Oyama has been the duly qualified guardian of the person and estate of Fred Y. Oyama, a minor. June Kushino attained the age of 21 years in 1942 and during her minority, Ririchi Kushino was the guardian of her person and estate.

In 1934, the petition continued, Kajiro Oyama and Kohide Oyama purchased certain agricultural land in San Diego county and a purported conveyance of it was made by one Yonezo Oyama to Fred Y. Oyama. The purchase price of \$4,000 was paid to Yonezo Oyama by Kajiro and Kohide Oyama. Upon the execution and delivery of this purported deed, Kajiro and Kohide Oyama entered into the possession [fol. 189] of the property and have ever since occupied and cultivated it as their own, and have had in their own right the beneficial use and enjoyment of the lands for agricultural purposes. The purchase of the property and the taking of the deed in the name of Fred Y. Oyama was a mere subterfuge, a fraud upon the People of the State of California and a violation of the Alien Land Law of California. Moreover, these persons acted willfully, knowingly and with intent to obtain the ownership and use of the agricultural lands for their own use.

Other allegations of this count were that Kajiro Oyama failed to render any account to the superior court for his receipts and expenditures as guardian, and has not filed any annual or other account or report with the Secretary of State of California, as required by section 5 of the Alien Land Law. No account or report has been filed by the guardian with the County Clerk of San Diego county or served upon the district attorney; but in conducting business affecting the land in controversy, Kajiro Oyama used the name "Fred Oyama" and "Y. Oyama", and maintained checking accounts in each of those names for the purpose of evading and violating the Alien Land Law.

The second cause of action incorporated some of the allegations of the first count, including those having to do with the race, nativity, citizenship and status of the parties. It then pleaded that in 1937, the Superior Court of the State of California, in and for the County of San Diego [fol. 190] in the matter of the Guardianship of June Kushino, made an order confirming the sale of certain de-

scribed land in that county from her to Fred Y. Oyama for a purchase price of \$1,500. Upon the making and recording of that order, Kajiro and Kohide Oyama entered into possession of the property and have since occupied and used it as their own and have had in their own right the beneficial use of the land for agricultural purposes. All of these acts were done by Kajiro and Kohide Oyama, willfully, knowingly and with intent to violate the Alien Land Law of the State of California. The prayer of the petition was that the land conveyed to Fred Y. Oyama be decreed to have escheated to the state as of the date of the respective deeds; also that, as against the state, each of the defendants be forever barred from asserting any claim or title to either parcel.

The defendants demurred to the petition upon the grounds that it did not state facts sufficient to state a cause of action, that the court lacked jurisdiction, that the California Alien Land Law is unconstitutional, and that the causes of action are barred by the statutes of limitations. The demurrer was overruled.

By answer, the defendants admitted the race and Japanese citizenship of Kajiro Oyama, Kohide Oyama, and Ririebi Kushino, but denied that, by reason thereof, they are not eligible to citizenship under the laws of the United States. They admitted the pleaded facts as to the birth and race of Fred Y. Oyama and June Kushino, and also the allegations concerning the guardianship proceedings. [fol. 191] But the answer denied that Kajiro and Kohide Oyama purchased the property described in the complaint and asserted that Kajiro Oyama provided the money to purchase the two parcels of property as a gift to his son. Each of the transactions was made in good faith and for the purpose of acquiring for their son a means of earning a livelihood and for the further purpose of guarding and husbanding the gift for that purpose. The property described in the complaint is agricultural land, but Kajiro and Kohide Oyama have not occupied, used or cultivated the land as their own or had the beneficial use of it. As an affirmative defense, the defendants alleged that the state should not recover because of laches.

Upon the trial of these issues, John C. Kurfurst was the only witness. He testified that he had known the Oyama and Kushino families since about 1932. When the

Japanese were evacuated from the Pacific coast, he rented the land in controversy and, by two checks, paid the rent to Fred Oyama. These checks were returned to him endorsed in that name. Kurfurst had never heard the name Kajiro Oyama; he had always known the father of the family as "Fred" and stated that "everybody else called him Fred". But he had received a letter signed "Fred Oyama" notifying him that the property was being turned over to a Mr. Kelly although Kurfurst had never heard the writer refer to himself by that name.

Other testimony of Kurfurst was that at one time Oyama, [fol. 192] senior, said: "Some day the boy will have a good piece of property because that is going to be valuable." However, he admitted that in a letter which he wrote, in referring to "Fred Yoshihiro Oyama", he meant the son and not the father. He knew that the property belonged to the boy, Fred Oyama, and to June Kushino; also that the father was running the boy's business. But he did not know whether the checks were made out to the "old man or the young fellow" and he did not know "whether the boy signed it or Mr. Oyama".

Evidence of official records showed that no reports pursuant to the requirements of the Alien Land Law had been filed by the defendants. The state also proved that in the guardianship proceeding, on two occasions, the father of Fred Y. Oyama, as guardian, applied for leave of court to borrow money and to mortgage the property as security for the indebtedness. Both applications were granted.

Upon this evidence the court found all of the facts alleged in the petition to be true. The conclusions of law drawn from these facts were that, as of 1934 and 1937, respectively, title to the two parcels of real property in question was vested in and did escheat to the State of California and the defendants were perpetually enjoined from setting up or making any claim to the land. The appeal is from that judgment.

The defendants contend that the Alien Land Law is unconstitutional because enacted for the purpose of and administered in a manner to discriminate against persons solely because of race. It is urged that as to both Kajiro Oyama, an alien, and Fred Oyama, a citizen, the statute denies due process of law as guaranteed by Article I, section 13, of the California Constitution, and violates Article

[fol. 193] 4, section 1, of the same Constitution which guarantees to all men the right to enjoy life, liberty and property. The point is also urged that the Alien Land Law constitutes an unlawful delegation of legislative power to the federal government, and that the phrase, "ineligible to citizenship" is vague, indefinite and constitutes a denial of due process.

As to Fred Oyama, a citizen, it is argued that the Alien Land Law violates the mandate of the California Constitution that no citizen or class of citizens shall be "granted privileges or immunities which, upon the same terms, shall not be granted to all citizens." (Const. Art. I, sec. 21.) Considering the statute in its application to both Kajiro and Fred Oyama, the defendants continue, it deprives them of property without due process of law and denies them equal protection of the laws and deprives Fred Oyama of privileges and immunities as a citizen, all in violation of the Fourteenth Amendment to the Constitution of the United States. Counsel also contend that, although the Alien Land Law has been upheld, the United States Supreme Court has changed the constitutional test applicable to state legislation discriminating against a group and its members because of race from the "rational basis" test to the "clear and present danger" test. A decision approving a statute does not bar a contrary determination at another time and under a different set of circumstances. Furthermore, by virtue of a recent amendment to the Naturalization Act, persons of Japanese birth no longer are ineligible to citizenship solely because of race, and the Alien Land Law is inapplicable to Kajiro Oyama because, if he [fol. 194] joins the Army, he may become a citizen.

The defendants also rely upon the statutes of limitations. As they state the rights of the parties, by section 312 of the Code of Civil Procedure all actions are barred by some statute of limitations and the state's claims are barred by the one-year, the three-year, the four-year and the ten-year statutes of limitations. More specifically, the present suit comes within section 340 of the Code of Civil Procedure. Section 338, subdivision 1 of the same code also is applicable because this is an "action upon a liability created by statute, other than a penalty or forfeiture". Moreover, section 338, subdivision 4 of the Code of Civil Procedure bars the remedy since the effect of the judgment is that the

defendants acted fraudulently. Section 343 also applies, and the broad provisions of section 315 of the same code include an escheat action. In conclusion, it is contended that the doctrine of laches is applicable to each cause of action. Two amicus curiae briefs filed on behalf of appellants develop in more detail the principal contentions in regard to the bar of the statutes of limitations.

The attorney general stands upon the decision of this Court and that of the United States Supreme Court upholding the constitutionality of the Alien Land Law as a proper exercise of the state's police power. It has been the invariable policy of the United States, he declares, to discriminate against aliens by racial classification for purposes of immigration and naturalization. There is a rational basis for discrimination, and the distinction between eligible and ineligible aliens is made by federal, not state, statutes. Moreover, the test of a "clear and present [fol. 195] danger" is limited to fundamental civil liberties and not to property rights and no evidence was presented establishing unconstitutional discrimination. The recent amendment to the naturalization laws does not abolish ineligibility to citizenship of aliens regardless of race, as the defendants contend, but only extends the privilege of naturalization to those serving honorably in the armed forces during World War II. Furthermore, since title to the property vested in the State of California long prior to the act of Congress attempted to be relied upon by the defendants, the later legislation can have no effect upon the state's title.

In regard to the statutes of limitations, the state contends that section 340 of the Code of Civil Procedure is not applicable to the recovery of real property and there is neither a forfeiture nor the imposition of a penalty under the Alien Land Law. Section 338, subdivision 1, does not apply, because no question of "liability" is involved. Subdivision 4 of the same section deals with actions based upon fraud, which is only an incidental issue in the present suit; the gist of the action is that the state claims to have title to land and the defendants are asserting unfounded claims to it. As to section 343 of the Code of Civil Procedure, the bar of that statute was not raised by the pleadings and it has no application to an escheat proceeding.

Considering section 315 of the Code of Civil Procedure, the attorney general takes the position that although there

[fol. 196] is no express language in the Alien Land Law which excepts its requirements from the operation of other provisions of law, the plain policy of the enactment is wholly inconsistent with the application of a statute of limitations and the legislature has so declared in a 1945 amendment to the statute. And because there is no showing of any injury by the delay, the doctrine of laches is not applicable, and the finding upon that issue is beyond the reach of an appellate court. The amicus curiae brief filed upon behalf of the state presents substantially the same arguments as those advanced by the attorney general.

The Alien Land Law legislates concerning the right to own land in this state. The scope of the statute is much broader than the acquisition and ownership of land; it includes the right to "acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property [or to] . . . have in whole or in part the beneficial use thereof." (Sects. 1, 2.) This right is given to citizens of the United States and to all aliens eligible to become such; aliens who are not eligible to citizenship under the laws of the United States can enjoy the right only in the manner and to the extent and for the purposes prescribed by any treaty existing at the time of the enactment of the statute between the government of the United States and the nation or country of which the alien is a citizen or subject. (Sects. 1, 2.) Section 4 of the statute, as originally enacted, denied to an alien parent the right to become the guardian of the estate of his native-born child and was held invalid. (Ex. [fol. 197] State of Yano, 188 Cal. 645.) However, in 1943, the legislature amended that section, allowing the appointment of an alien guardian but preventing such guardian from enjoying, either directly or indirectly, the beneficial use of land owned by the minor. The new provision requires the guardian to make an annual report to the court showing all moneys expended and received, and to serve a copy of such report upon the district attorney of the county, together with notice of the hearing of the report. Failure to do so renders the guardian punishable by fine, imprisonment, or both.

Section 5 directs the guardian to file in the office of the secretary of state, and in the office of the county clerk of each county in which any property is situated, an annual report describing "property . . . held by him on behalf of the alien or minor; . . . the date when each item of

such property came into his possession or control; and itemized account of all such expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases . . . and other agreements in respect to land and the handling or sale of products thereof." Violation of this section is punishable by imprisonment, fine, or both.

Section 7 of the statute, as amended in 1923, states that real property acquired in violation of the act by an ineligible alien "shall escheat as of the date of such acquiring, to, and [fol. 198] become and remain the property of the state of California." Section 8.5, added in 1945, provides: "No statute of limitations shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions of this act." As a part of the same enactment, the legislature declared that it "does not constitute a change in, but is declaratory of, the preexisting law." (Stats. 1945, ch. 1136.)

By other provisions of the legislation, where the property interest attempted to be transferred is of such character that the ineligible alien "is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it", and if the conveyance is made "with the intent to prevent, evade or avoid escheat", the "transfer of the real property, or any interest therein, though colorable in form, shall be void as to the state and the interest thereby conveyed as sought to be conveyed shall escheat to the state as of the date of such transfer." (Sec. 9.) By the terms of the same section, a *prima facie* presumption that the conveyance is made with such intent shall arise upon proof of: "(a) The taking of the property in the name of a person other than the persons mentioned in section two hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two hereof"

The determination as to eligibility to citizenship rests exclusively with the federal government and is fixed by [fol. 199] Congress in the naturalization laws. Whomever it endows with the right to become a citizen may acquire and own land in California.

Eligibility has been extended to "white persons, persons of African nativity or descent, descendants of races indigenous to the Western Hemisphere, and Chinese persons

or persons of Chinese descent" and includes native-born Filipinos having honorable service in our armed forces and former citizens who are otherwise eligible. (57 Stats. 601, 8 U. S. C. A.; see, 703.) In 1942, the Naturalization Act was amended (56 Stats. 182, 8 U. S. C. A., see, 1001) to extend the privilege of naturalization to include "any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who shall have been at the time of his enlistment or induction a resident thereof and who (a) was lawfully admitted into the United States, including its Territories and possessions, or (b), having entered the United States . . . prior to September 1, 1943, being unable to establish lawful admission into the United States serves honorably in such forces beyond the continental limits of the United States or has so served. . . ."

The state has the right to regulate the tenure and disposition of real property within its boundaries. (Mott v. Cline, 200 Cal. 434; Blythe v. Hinckley, 127 Cal. 431; Terrace v. Thompson, 263 U. S. 197; United States v. Fox, 94 U. S. 315.) It also has the power, in the absence of a treaty to the contrary, to forbid the taking or holding of property [fol. 200] within its limits by aliens (Mott v. Cline, *supra*, p. 447; In re Y. Akado, 188 Cal. 739, 743; Blythe v. Hinckley, *supra*, p. 436; Terrace v. Thompson, *supra*, p. 217) and our Constitution leaves to the legislature this power with regard to all aliens ineligible to citizenship. (Cal. Const., Art. I, see, 17; In re Y. Akado, *supra*, p. 743.)

The Alien Land Law expressly honors every right vouchsafed by a treaty between this and another nation. In all cases where the right to own land in the United States by citizens of a foreign nation is granted by treaty, such right is recognized and fully protected. (Sec. 2.) "The treaty between the United States and Japan provides that citizens of Japan residing in the United States may lease land for residential and commercial purposes, but it contains no provision authorizing an alien of the Japanese race to lease or acquire land for agricultural purposes. Consequently the initiative alien law . . . prohibits the acquisition by such alien of any agricultural land situated in this state." (In re Y. Akado, *supra*, p. 740; see also: Terrace v. Thompson, *supra*, p. 223; Porterfield v. Webb, 263 U. S.

225, 232.) The abrogation of this treaty on January 26, 1940, has no effect upon the rights of the parties in the present litigation.

Shortly after the People enacted the Alien Land Law, a suit was brought to enjoin the attorney general from enforcing its provisions. The plaintiffs complained "that they have been unlawfully coerced by . . . threats of prosecution from entering into . . . agreements [pertaining to the planting, cultivating, and farming of certain agricultural lands] and are thereby deprived of their property without due process of law and are denied equal protection [fol. 201] of the law in contravention to the fourteenth amendment of the federal constitution." It was held that the legislation does not "offend any clause or provision of the state or federal constitution or violate any treaty obligation or right existing between this country and the empire of Japan." As to the validity of certain cropping contracts, the court said, quoting from *Webb v. O'Brien*, 263 U. S. 313: "Conceivably, by the use of such contract, the population living on and cultivating the farm lands might come to be made up largely of ineligible aliens. The allegiance of the farmers to the state directly affects its strength and safety: (*Terrace et al. v. Thompson, supra*). We think it within the power of the state to deny to ineligible aliens the privilege so to use agricultural lands within its borders." (*Porterfield v. Webb*, 195 Cal. 71.)

The *Webb v. O'Brien* decision, it was pointed out in this case, "rests largely upon broad principles of national safety and public welfare. Unquestionably the farming of lands by ineligible aliens would give them a use, occupancy, and benefit of agricultural lands which in effect would amount to a deprivation of its use, enjoyment and occupancy by the citizen. Any other theory would be incompatible with the occupation of husbandry . . . Racial distinctions may furnish legitimate grounds for classifications under some conditions of social or governmental necessities." (195 Cal. at p. 82.)

In the case of *Mott v. Cline*; *supra*, the owner-lessor challenged the validity of a certain option provision in a lease, [fol. 202] the contention being that the lessee was an ineligible alien. As to the constitutionality of the statute, the court said: "It has been firmly settled by the decisions of both federal and state courts . . . that the adoption of the Alien Land Acts was a lawful exercise of the police

power. In fact, it is the exercise of that power in its highest and truest sense. The ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of a state. It directly affects its welfare and safety." (200 Cal. at p. 447.)

The status of aliens in connection with the ownership of real property was also considered by the United States Supreme Court in *Terrace v. Thompson, supra*. The court there pointed out that "two classes of aliens inevitably result from the naturalization laws,—those who may and those who may not become citizens. The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership as defined in the act." Considering the contention that an alien land law similar to our own enacted by the State of Washington was repugnant to the due process clause and the equal protection clause of the Fourteenth Amendment, the court declared: "State legislation applying alike and equally to all aliens, withholding from them the right to own land, cannot be said to be capricious, or to amount to an arbitrary deprivation of liberty or property, or to transgress the due process clause." Upon the subject of equal protection the [fol. 203] court held that the classification was reasonable, saying that the rule established by Congress on the subject of naturalization "in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership as defined in the act." The broad basis of the decision is that "one who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of, the state, and, so lacking, the state may rightfully deny him the right to own and lease real estate within its boundaries." In another case, the California statute was upheld upon these grounds, with the comment that both acts were within the police power of the respective states. (*Porterfield v. Webb*, 263 U. S. 255.) Other federal court cases in which the constitutionality of the Alien Land Law of California has been considered are: *Morrison v. California*, 291 U. S. 82 (reversing *People v. Morrison*, 218 Cal. 287, and declaring section 9a of the Alien Land Law unconstitutional); *Cockrill v. California*, 268 U. S. 258 (sustaining constitutionality of the presumption set forth in section 9, subd. (a), of the Alien Land Law); *Frick v. Webb*, 263 U. S. 326.

The defendants rely upon West Virginia State Board of Education v. Barnette, 319 U. S. 624, and Thomas v. Collins, 323 U. S. 516, for the proposition that modern doctrines of constitutional law extend the protection of the First Amendment and the Fourteenth Amendment to all cases where the legislature cannot justifiably find a "clear [fol. 204] and present danger" as a basis for restricting the liberty of the individual. However, Justice Jackson, speaking for the majority in the first of these cases, clearly distinguished between the test to be used when dealing with fundamental liberties, which include freedoms of speech, press; assembly, and worship, and other rights. He said: "In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect. It is important to note that while it is the Fourteenth Amendment which bears directly upon the State it is the more specific limiting principles of the First Amendment that finally govern this case." (319 U. S. at p. 639.) [fol. 205] And in the more recent case of Thomas v. Collins, *supra*, Justice Rutledge, speaking for the majority, made clear that the "clear and present danger" test will be applied only to those fundamental liberties protected by the First Amendment. (See also: *Asbury Hospital v. Cass County*, 66 S. Ct. 61; *California v. Thompson*, 313 U. S. 109; *Clark v. Paul Gray, Inc.*, 306 U. S. 583; *Hendrick v. Maryland*, 235 U. S. 610; 33 Cal. L. Rev. 319.)

These cases and the decisions of the United States Supreme Court previously cited, including *Terrace v. Thomp-*

son, *supra*, and Porterfield v. Webb, *supra*, limit the test of a "clear and present danger" to fundamental liberties and do not restrict the authority of the state, under its police power, to limit the rights of aliens in regard to real property situated within its borders. It is sufficient if a rational basis is found for the classification. And considering the Alien Land Law in connection with the record now before the court, there is no evidence that the statute was unconstitutionally applied or administered.

The legislature of this state has set up eligibility to citizenship as a primary standard, and because the determination of some fact or condition incorporated in this primary standard rests elsewhere than in the legislature, or that this requirement is measured by another standard not under the control of the state and which may be subject to change, does not amount to an unconstitutional delegation of legislative authority. (Ex parte Gerino, 143 Cal. 412; In re Lasswell, 1 Cal. App. 2d 183 and cases cited therein; [fol. 206] People v. Goldfogle, 242 N. Y. 277.) This court and the United States Supreme Court in the cited cases have held that the use of the phrase, "ineligible to citizenship" does not constitute a denial of due process.

The property in question passed to the State of California by reason of deficiencies existing in the ineligible alien, and not in the citizen Oyama. The citizen is not denied any constitutional guarantees because an ineligible alien, for the purpose of evading the Alien Land Law, attempted to pass title to him. It is the deficiency of the alien father and not of the citizen son which is the controlling factor; therefore, any constitutional guarantees to which the citizen Oyama is entitled may not properly be considered, for the deficiency in a person other than himself is the cause for the escheat. Property which the citizen never had he could not lose, and as the land escheated to the state instanter, he acquired nothing by the conveyance and the Alien Land Law took nothing from him.

The trial court's findings in regard to the violation of the statute are fully supported by the evidence. The inferences to be drawn from the evidence that the real property was conveyed to the son, thereby putting it beyond the power of the father to deal with the property directly, the father's failure to file the reports required of a guardian, the unexplained failure of the father, or any one of the defendants, to offer himself as a witness, and the presumption

created by section 9 of the Alien Land Law, are ample in this regard. Indeed, this evidence convincingly points to [fol. 207] the conclusion that the minor son had no interest in the property; his name being used only as a subterfuge for the purpose of evading the Alien Land Law.

The defendants also urge that by the 1942 amendment to the Naturalization Act (56 Stats. 182, 8 U. S. C. A., see. 1001), permitting the naturalization of every person who honorably served in the armed forces of the United States during the present war, all ineligibility to naturalization based upon race was removed. The clear purpose of Congress in granting that privilege to those persons who could not otherwise become citizens was to reward military service. Certainly the statute does not make eligible to citizenship every Japanese national; and those who take advantage of its provisions gain that status because of work well done for our country and not by reason of having the qualifications to join its armed forces. Following World War I, the same privilege was extended to Filipinos (40 Stats. 542, 8 U. S. C. sec. 388) and it was held that the amendment did not eliminate the basic requirements for naturalization and "as to those not possessing such qualifications, the distinction based on color and race was not eliminated." (Roque Espiritu De La Yala v. United States, 77 Fed. 2d 988; certiorari denied, 296 U. S. 575.) The statute relied upon by the defendants in the present case has the same effect.

Another complete answer to the contention of the defendants in regard to the changes in the requirements for naturalization is that, under the Alien Land Law, in 1934 the land described in the first count of the complaint automatically escheated to the state, and as to the property conveyed by the estate of June Kushino, escheat occurred three years later. Title vested in the state upon these dates, and the later legislation has no effect upon that title.

The defendants claim that the present proceeding is barred by the provisions of one or more of the statutes of limitations generally applicable to civil actions. Primarily, this defense is based upon section 312 of the Code of Civil Procedure which provides: "Civil actions, without exception, can only be commenced within the period prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is pre-

scribed by statute." But the plain meaning of this section is that the particular statutes of limitations which are found in section 315, et seq., of the Code of Civil Procedure may be invoked except as to an action authorized by legislation which includes a provision limiting the time within which it may be commenced. And the "different limitation" mentioned in section 312 clearly should be construed to include no limitation as to an action commenced under a statute which specifies that time shall not bar the right to invoke its provisions.

The clear and unmistakable purpose of the Alien Land Law at all times since it was enacted by the People as an initiative measure has been to place the ownership of real property in this state beyond the reach of an alien [fol. 209] eligible to citizenship. Not only is such an alien prohibited from acquiring real property, or any interest therein; the statute expressly provides that he shall not possess, enjoy, use, cultivate or occupy land. He may not convey real property, or any interest therein, or have, in whole or in part, the beneficial use of land, and any attempted transfer to an ineligible alien is void as to the state. These provisions are entirely inconsistent with a statute of limitations; they state broad principles of public policy relating to the ownership of land and declare that any conveyance made in violation of the mandate of the People shall be void.

The legislature of 1945 made this construction certain. It declared: "No statute of limitations shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions" of the Alien Land Law. (Sec. 8.5.) "The amendment made by this act does not constitute a change in, but is declaratory of, the preexisting law." (Stats. 1945, ch. 1136, sec. 2.) It is entirely proper for the legislature to clarify the provisions of a statute in this manner, and for the court to follow that construction. (Standard Oil Co. v. Johnson, 24 Cal. 2d 40, 48; Union League Club v. Johnson, 18 Cal. 2d 275, 278-279.)

In regard to the special defense of laches, the court found that the action was not barred upon that ground. The record shows that no evidence was presented tending to [fol. 210] prove that any injury resulted to the defendants by reason of the lapse of time which occurred before the commencement of the proceeding and the finding is amply

justified. (Alexander v. State Capital Co., 9 Cal. 2d 304, 313; Ballagh v. Williams, 50 Cal. App. 2d 10, 13.)

The judgment is affirmed.

Edmonds, J.

We concur: Shenk, J.; Spence, J.; Schauer, J.

[fol. 211]

PEOPLE

vs.

OYAMA

L. A. 19533

CONCURRING OPINION

I concur in the judgment on the ground that the decisions of the United States Supreme Court cited in the main opinion are controlling until such time as they are reexamined and modified by that court.

Traynor, J.

[fol. 212] ORDER DUE Nov. 30, 1946

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA IN BANK

L. A. No. 19533

PEOPLE

vs.

OYAMA, etc., et al.

ORDER DENYING REHEARING

By the Court:

Appellant's petition for a rehearing is denied.

Carter, J. voting for a rehearing.

Dated Nov. 25, 1946.

Gibson, Chief Justice.

Filed Nov. 25, 1946. William L. Sullivan, Clerk, by W. J. S., S. F. Deputy.

[fol. 213] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Los Angeles No. 19531

THE PEOPLE OF THE STATE — CALIFORNIA, Plaintiff, Respondent,

vs.

FRED Y. OYAMA, Also Known as Fred Yoshihiro Oyama, a Minor; Kajiro Oyama, Also Known as K. Oyama, Individually and as Guardian of the Person and Estate of Fred Yoshihiro Oyama, a Minor; Kohide Oyama, Formerly Kohide Kushino; Ririchi Kushino; June Kushino, Also Known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as Administrator of the Estate of John Mares, Deceased; George Schertzer; John Kurfurst, et al., Defendants, Appellants

On Appeal from the Superior Court in and for the County of San Diego

JUDGMENT—October 31, 1946

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It Is Ordered, Adjudged, and Decreed by the Court that the Judgment of the Superior Court in and for the County of San Diego in the above entitled cause, be and the same is hereby affirmed. Respondent to recover costs on appeal.

I, William I. Sullivan, Clerk of the Supreme Court of the State of California, do hereby certify, that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 31st day of October, 1946, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 2nd day of December, A. D. 1946.

William I. Sullivan, Clerk, by L. F. White, Deputy.

(Seal.)

[fol. 214] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 215] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 7, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1579)

FILE COPY

U.S. - Supreme Court, U. S.

FEB 21 1947

No. 1059

44

IN THE
Supreme Court of the United States

OCTOBER TERM, 1946.

FRED Y. OYAMA AND KAJIRO OYAMA, *Petitioners*,

v.

STATE OF CALIFORNIA.

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF CALIFORNIA.**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1946.

No.

~~FRED Y. OYAMA AND KAJIRO OYAMA, Petitioners,~~

v.

STATE OF CALIFORNIA.

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF CALIFORNIA.**

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of California entered on October 31, 1946 (R. 121) affirming the judgment of the Superior Court of California for the County of San Diego. A petition for rehearing was denied on November 25, 1946. (R. 120).

OPINIONS BELOW

The findings of fact and conclusions of law in the Superior Court (R. 58-64) are not reported. The opinion in the Supreme Court of California (R. 105-120) is reported in 29 Advance California Reports 157; 173 Pac. (2d) 794.

JURISDICTION

The judgment of the Supreme Court of California was entered October 31, 1946 (R. 121). An order denying these petitioners' petition for rehearing was en-

tered November 25, 1946 (R. 120). The constitutional issues here presented were urged in the trial court (R. 18-19, 19-21, 22-37), where they were overruled (R. 50), and in the court below (R. 105), where they were also overruled (R. 105-120). The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code as amended.

QUESTIONS PRESENTED

1. Whether the Alien Land Law, as applied in this case, deprives petitioner Fred Oyama, an American citizen, of the equal protection of the laws and of the privileges and immunities of a citizen, in violation of the Fourteenth Amendment to the Constitution.
2. Whether the Alien Land Law, as enforced and as applied in this case, deprives petitioner Kajiro Oyama, an alien of the Japanese race, of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution.
3. Whether the decision of the Supreme Court of California, holding that no statute of limitations is applicable to actions for escheat under the Alien Land Law, is not a retroactive reopening of a vested title to real estate which also violates the Fourteenth Amendment.

STATUTES INVOLVED

The relevant provisions of the California Alien Land Law (Alien Property Initiative Act of 1920, Stats. (1921) p. lxxxiii), as amended, are set out in the Appendix, *infra*.

STATEMENT

On August 28, 1944, the State of California filed a petition under the California Alien Land Law to declare an escheat to the State of certain agricultural

lands (R. 1). Fred Oyama, a minor and an American citizen (R. 59) and his father and guardian, Kajiro Oyama, an alien of the Japanese race (R. 58), who are now petitioners here, were named among several other defendants (R. 1). The petition alleged that the land in question consisted of two parcels. One was alleged to have been purchased on August 18, 1934, by Kajiro and Kohide Oyama, title being conveyed directly to Fred Oyama and a deed to that effect duly recorded (R. 2-3). The other was alleged to have been transferred to Fred Oyama on December 17, 1937, by an order of the Superior Court of San Diego County confirming the sale to Fred Oyama from the estate of June Kushino, a minor, and a certified copy of the order was duly recorded (R. 6). The petition prayed for an escheat as of the dates specified above (R. 7-8).

A demurrer having been filed (R. 18) and overruled (R. 51), the matter was tried upon the petition and answer (R. 53-55). At the trial, it was shown that on March 1, 1935, Kajiro Oyama petitioned the San Diego Superior Court to be appointed guardian of Fred Oyama stating that the latter was his minor son and was the owner of the parcel of land conveyed in 1934. On August 15, 1935 he was appointed guardian by the court and filed the necessary bond. Subsequently, with permission of the court, Kajiro Oyama borrowed money upon and mortgaged the property as guardian for Fred Oyama (P. Exh. 1).* The Clerk of the San Diego Superior Court identified the guardianship records of Fred Oyama and June Kushino, and testified that no reports had been filed with his office on behalf of Fred Oyama under the Alien Land Law (R. 83-84).

* The exhibits are not included in the printed record, but are on file with the Clerk.

4

The only other witness at the trial was John C. Kurfurst, who was left in charge of both parcels of property when petitioners, along with all other persons of Japanese origin and ancestry, were evacuated from the Pacific Coast (R. 84). He testified that the Oyamas were not occupying the property at that time but rather that it was being occupied by the Kushino family (R. 81-82). After the evacuation he rented the property. Kurfurst kept all the proceeds in his own bank account, making no payments to the owner of the land until a representative of the War Relocation Authority came to discuss the matter with him (R. 84-85). Thereafter he transmitted checks amounting to \$16 and \$330 to Fred Oyama covering certain of the rentals minus expenses in connection with the property which he himself incurred (R. 85). These checks were returned to Kurfurst endorsed "Fred Oyama". (R. 86; P. Exhs. 3, 4). No evidence was offered proving that the signature was by anyone other than Fred Oyama, the son. On June 7, 1944, Fred Oyama advised Kurfurst by letter that the property was being turned over to someone else to be managed (R. 87; P. Exh. 6).

Although on direct examination Kurfurst testified that he knew the father as "Fred Oyama" he stated that he had never heard the father refer to himself by that name (R. 87). Moreover, on cross-examination he testified that on one occasion he had heard the father say, "Some day the boy will have a good piece of property because that is going to be valuable" (R. 90). Also, Kurfurst stated that in a letter entitled "Re: Fred Yoshihiro Oyama and June Kushino" which he wrote to the War Relocation Authority regarding the property (D. Exh. A) he meant by "Fred Oyama" the boy, not the father (R. 91-92). Also, he understood a letter written by the War Relocation Authority to Kurfurst

regarding "Fred Oyama" (D. Exh. B) to refer to the son and not the father (R. 92). Moreover, he admitted that he knew "that the father was running the boy's business" when he was in California and that "the property belonged to the boy and to June Kushino (an American-born Japanese) (R. 94). Finally, the receipts issued by the War Relocation Authority for the monies transmitted by Kurfurst (D. Exh. D) were for the account of Fred Oyama, not of Kajiro Oyama (R. 94-95).

The Decisions below. The language in which the findings of the Superior Court are couched is substantially identical to that of the charges of the State (R. 1-8). In essence the Superior Court found that the two pieces of land were purchased by Kajiro Oyama and Kohide Oyama, the boy's mother; that, although the first parcel was deeded to Fred Oyama in 1934 and recorded in his name and the estate of June Kushino transferred the second parcel to Fred Oyama in a guardianship proceeding and the order of the court authorizing the transfer to Fred Oyama was recorded, the father and mother entered into possession of the property and used it as their own, and have had the beneficial use and enjoyment of the land. The court also found that the father had not filed financial reports regarding the property under the Alien Land Law as guardian of Fred Oyama and that both transfers to Fred Oyama were subterfuges and frauds on the State. The court further found that these "acts" were done in an attempt to prevent, evade and avoid escheat and that the State was entitled to have the property declared escheated (R. 58-63).

The Supreme Court of California sustained the Superior Court principally on the basis of earlier decisions of this Court holding that the exclusion of "ineli-

gible aliens" from having any interest in agricultural land is a proper exercise of the police power of the state. The court further held that Fred Oyama was denied no constitutional guarantees because the property passed to the state by virtue of deficiencies existing in the alien father, not the citizen son (R. 117). Finally, the trial court's findings of fact upon the basis of which the land was declared to escheat were found to be fully supported by the evidence (*ibid.*). Two of the seven justices did not take part in the decision; one more concurred specially solely on the ground that the decisions of this Court "are controlling until such time as they are reexamined and modified by that court." (R. 120). Judgment was entered on October 31, 1946, affirming the judgment of the Superior Court (R. 121). A petition for rehearing was filed, and was denied on November 25, 1946 (R. 120), one judge voting for the rehearing.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of California erred:

1. In failing and refusing to hold that the California Alien Land Law of 1920, as amended, as applied in this case, deprives petitioner Fred Oyama of the equal protection of the laws and of the privileges and immunities of a citizen, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.
2. In failing and refusing to hold that the California Alien Land Law of 1920, as enforced and as applied in this case, deprives petitioner Kajiro Oyama of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

- 3: In applying a statute by which California had removed any statute of limitations on escheat actions to an action brought subsequent to the date when the prior period of limitations had expired, in violation of the Fourteenth Amendment to the Constitution of the United States.
- 4: In affirming the decision of the Superior Court.
- 5: In failing and refusing to dismiss the petition of the State of California.

REASONS FOR GRANTING THE WRIT

The California Alien Land Law, Appendix, *infra*, first passed in 1913, was before this Court in 1923 in several companion cases in which its constitutionality as applied to various circumstances was challenged and sustained. *Frick v. Webb*, 263 U. S. 326; *Webb v. O'Brien*, 263 U. S. 313; *Porterfield v. Webb*, 263 U. S. 225. See also *Cockrill v. California*, 268 U. S. 258. This petition is designed to demonstrate that, as here applied, the statute sanctions such patently discriminatory treatment of American citizens on racist grounds as to be unconstitutional on grounds not present in the previous cases. It is also, if that be necessary, designed to secure a review of those decisions in the light of the amendments to the law since 1923, and, if need be, a reversal of those holdings now a quarter-century old.*

* The fact that legislation similar in intent and effect now exists in six other states is further reason for granting this writ. Ark. Stat. (1943) Act 47; N. M. Const. Art. 2, § 22; Ore. Comp. Laws Ann. (1940) tit. 61, § 101; Sess. Laws (1945) c. 436; Utah Code Ann. (1943), 1945 Cumul Supp. tit. 78, c. 6(a); Wash. Rev. Stat. § 10581; Wyo. Sess. Laws (1943) c. 35.

THE ALIEN LAND LAW, AS CONSTRUED HERE, DEPRIVES
FRED OYAMA, A CITIZEN, OF THE EQUAL PROTECTION
OF THE LAWS AND OF THE PRIVILEGES AND IMMUNI-
TIES OF A CITIZEN

Fred Oyama, born in California in 1928, is an American citizen (R. 59). In 1934, he received the title to certain agricultural land in California, and in 1937 received the title to an additional tract of similar land (R. 6, 60, 62). The consideration for the land in each instance was paid by his parents (R. 60, 62), who were aliens, born in Japan (R. 58). Now, by an escheat proceeding, it is claimed that this property may be taken from Fred Oyama by the State of California. The circumstances are such that it is abundantly clear—indeed it will no doubt be admitted—that if Fred Oyama's parents had been German aliens, or British aliens, instead of Japanese aliens, Fred would still have his land. We believe it plain that the statute, as thus construed, discriminates against Fred Oyama solely because of his racial origin. As such, we believe, it offends the equal protection and privileges and immunities clauses in Section 1 of the Fourteenth Amendment. By the same token, it is even more clearly in conflict with the specific provision of Section 42 of Title 8, U.S.C., which provides, "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

A few preliminary remarks will clarify the matter. Under the law of California—at least as respects all except American citizens of Japanese ancestry—a minor child is clearly entitled to take and hold real estate of all kinds, as well as personal property. *Estate*

of Yano, 188 Cal. 645, 206 Pac. 995, 997 (1922). Moreover, as stated by the Supreme Court of California in the *Yano* case, *supra*, (206 Pac. at p. 998) :

"Delivery to, and acceptance by, an infant, will be presumed. When a deed clearly-beneficial to an infant is given to him; his acceptance will be presumed, and the recording of the deed is a sufficient delivery."

In the same case, the court dealt with the possibility of a resulting trust in favor of the parent, due to his payment of the consideration, and ruled that no such trust would arise (*ibid.*). To the same effect is *People v. Fujita*, 215 Cal. 166, 169, 8 Pac. (2d) 1011. Finally, the court stated (*ibid.*) :

"The act of petitioner, in securing conveyances of land to his daughter, while confessedly carried out because the law of California did not permit him to buy it for himself, was in no sense unlawful, since the daughter is a citizen of the United States and entitled to acquire and own real estate."

We have, then, a situation where, by state law, it is recognized not only that it is proper for a parent to make an effective gift of real estate to a minor child, but that there is, even in the case of an ineligible alien parent, no taint of illegality in the transaction. It is lawful, normal, and proper in all respects.

Fred Oyama, however, although he received the record title to the land in question, had the misfortune of being, in California, by reason of the decision of the California courts in the instant case, something less than a full American citizen, because his father and mother were Japanese. Had he been Fred Johnson, he would have grown to manhood in full ownership of his land; no procedure of the State of California could have deprived him of it without adequate compensa-

tion. Being Fred Oyama, he was faced with the necessity of defending the gift he received against the claim of the state that the property had in reality gone to his parents, and thence to the state by virtue of Section 7 of the Alien Land Law, *infra*. Unlike other children, his acceptance of the land will *not* be presumed (*cf.* *Estate of Yano*, quoted *supra*); he must prove that he got it. This, alone, it would appear, denies to him the equal protection of the laws.

We need not stop there, however. An examination of the facts upon which the court below relies serves to emphasize the severity of the handicaps under which Fred Oyama, as compared with Fred Johnson, labors. The evidence is summarized by the court at R. 117-118, and it will repay careful analysis.

1. The court refers to four items of "evidence", and states that "the inferences to be drawn from [them] *** are ample" to support the trial court's finding of a violation of the statute. The first item referred to is (R. 117):

"*** the evidence that the real property was conveyed to the son, thereby putting it beyond the power of the father to deal with the property directly, ***"

With due respect, we utterly fail to see how, if that be evidence *against* the validity of the transaction, Fred Oyama ever had a chance. The California law requires, albeit we think unconstitutionally, that ineligible aliens not own or have the use of agricultural land. Yet the court states that a conveyance *to the son*, an American citizen, which put it beyond the reach of the ineligible alien, is evidence from which an inference can be drawn that the transaction was merely colorable. That "evidence" will exist in every case; Fred

Oyama can *never* receive agricultural land purchased for him by his parents, because the very act by which they attempt not to violate the statute is evidence that they in fact do violate it.

2. The next item of evidence from which the inference is drawn is (R. 117):

"* * * the father's failure to file the reports required of a guardian".

Fred Oyama, in other words, may lose his gift because of what *someone else* does later. If Fred Johnson's father as his guardian failed to file reports, nothing would happen to anyone but Fred Johnson's father; he would be subject to the discipline of the court for failure to file, just as is Fred Oyama's father. Fred Oyama is in the position of meeting this charge that his guardian failed to file reports only because the property given to him was of a character that his father could not own. He is subject to an additional burden, that of, presumably, acting as a guarantor of his guardian's conduct, simply because he is "the minor child of such [ineligible] alien". Fred Johnson need not worry; Mr. Johnson can be as illegal and as careless as he pleases, and it creates no inference that he is recanting in his gift of the property to his son. Mr. Oyama's conduct, in California, can be used, ten years later, to bolster the effort of the state to deprive Fred Oyama of his property in its entirety.

Moreover, another comment is warranted on the reports. Originally, by Section 4 of the 1920 amendments to the Alien Land Law, Fred Oyama's father could not have been his guardian at all; he was prohibited by law. That was declared unconstitutional by the California courts in *Estate of Yano, supra*, in 1922. But in that same 1920 Act, by Section 5, the persons

other than an ineligible alien parent, who might under the 1920 Act be appointed, were required to file reports annually. Not until 1943 did the law provide a system of annual reports by an ineligible alien-guardian in a revised Section 4.

It may well be true, therefore, that Fred Oyama's guardian did not, until 1943, understand that he was under any obligation to file any reports under a section enacted in a statute which expressly excluded him from its operations. The fact that the court, although he was known to be guardian, did not, so far as appears, take any action to compel the reports, lends credence to this, as does the fact that no action was taken against him under the criminal sanctions of Section 5 by the District Attorney. And in the short interval between the imposition of the obligation to file the reports required by Section 4 in 1943 and the filing of this action on August 28, 1944, the father was detained in a relocation camp, physically removed from California and the supervision of his son's land. Moreover, the record shows that from the time of the father's removal from California until February 10, 1944, he received no proceeds from the property (R. 81, 84; 85; P. Exhs. 3 and 4).

3. The third item of evidence relied on by the court below is (R. 117) :

"* * * * the unexplained failure of the father, or any one of the defendants, to offer himself as a witness, * * * *

Again, Fred Oyama stands to lose his gift because of something that someone else has done. Again he is made the guarantor of his father's conduct. The father never claimed that he had any interest in the property. We see no basis for an obligation on his part to "offer

himself as a witness". In addition, it certainly must be admitted by the state that it is drawing a long bow when it attempts by conduct of others in 1945 to destroy the validity of the deeds and other evidences of title that Fred Oyama received over ten years before.

4. The fourth and final item of "evidence" relied upon by the court below is (R. 117-118):

"*** the presumption created by Section 9 of the Alien Land Law."*

Two comments are appropriate. First, and most obvious, Fred Oyama must face a burden which Fred Johnson need not face, and he must face this burden solely because of his race—because his parents are Japanese. A gift by a parent to a child is a normal, usual and expectable occurrence; consequently in the case of the child whose parents are British aliens, no burden is cast upon the citizen to prove his gift. In the case of a child who, though also an American citizen, has parents who are Japanese, the gift may be defeated unless the child can come forward and adduce affirmative proof as to the intent of his parents. Patently, the presumption operates unequally on different classes of citizens. Nothing in *Cockrill v. California*, 268 U.S. 258, in which the validity of this presumption was sustained in a criminal case, is inconsistent with this view; the point here at issue was not there involved. Here we have a gift made by a father to his son—a natural

* Section 9 of the Alien Land Law provides.

"A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:

"(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof;"

and expectable occurrence. Whatever justification there may be for applying a presumption such as this to a gift to a stranger, certainly the policy considerations do not apply with equal force here. Fred Oyama has a right to expect gifts made to him to be treated at their face value, just as Fred Johnson does. Moreover, it may be questioned that the decision in the *Cockrill* case is sound; certainly there is no more reason to suppose that the recipient of a gift is in any better position than the State to adduce evidence on the mental state of the donor. Cf. *Morrison v. California*, 291 U.S. 82, in which another presumption created by Section 9a of the Alien Land Law was held to violate the Fourteenth Amendment.

The other comment which should be made is on the nature of the burden thus imposed on Fred Oyama. Even if the mere existence of the presumption is not enough to destroy equal protection of the laws, certainly that conclusion follows when, as here, the presumption is given such overwhelming effect.

This presumption does not vanish when evidence is introduced. Without fully reciting the proof, suffice it to say here that there was testimony by John Kurfurst, one of the defendants, that he understood that the land in question belonged to Fred Oyama, that receipts for income from the land were signed by Fred Oyama, that Fred Oyama's father had told him that it was Fred's land and that he knew the father was running the boy's business (See R. 80-97). Despite evidence bearing on the issue, the trial judge stated (R. 103):

"I think that there is only one way I could determine this matter under this evidence and that would be simply to hold, that the plaintiff has, by the application of the inference, the statutory inference, the presumption, and by the evidence that has been produced here, has maintained the pre-

ponderance of the evidence and that judgment before the plaintiff."

And, as we have already stated, in the court below the presumption was likewise deemed to be "evidence" from which inferences could be, and were, drawn (R. 117-118). Fred Oyama, in other words, goes in the trial of his case with one strike against him; Section 9 is not a matter of going forward with evidence, but itself constitutes affirmative proof of the state's case. Fred must ~~not establish~~ only by the preponderance of the evidence the intent of his father; he must establish this intent by what, we suppose, is enough evidence to overrun both the state's evidence and the presumption. Just how this could ever be done in a matter when the inquiry relates to something already so difficult as "intent to prevent, evade or avoid" escheat is a matter which must remain highly speculative. Certainly, given the attitude of the courts below it may be doubted whether it could ever be accomplished. How can Fred Oyama be expected to prove that his father, in making a gift to him of land, did not intend to "prevent" escheat? Everything which the father would do in making the gift to try to make it a valid one would by the very terms of the statute be evidence *against* Fred in his attempt to maintain title against the state. In this respect, the presumption appears to become, for all practical purposes, conclusive, and certainly, as such, unconstitutional under *Heiner v. Donnan*, 285 U. S. 312.

In summary, we submit that the Alien Land Law, as here applied, denies to Fred Oyama, a citizen of the United States, the protection of the laws equal to that which is applied to Fred Johnson and of the privileges and immunities possessed by Fred Johnson. Each receives a deed to a parcel of land paid for by his father

as a gift to him while still a minor. Fred Johnson has his; he need not worry thereafter, for the State of California will not only not try to deprive him of it but will in fact use its machinery of justice to make sure that it and its income is held for him properly and safely. Fred Oyama, quite the contrary. He must defend it against a claim that he never got it. He must face the realities of life: that the state can use as evidence *against* him the fact that his father did not keep title in himself and that his father may be remiss in his conduct thereafter, even many years thereafter, by failing to carry out his statutory duties as guardian, or by failing to come in and offer himself as a witness in the proceeding. And, if he is really realistic, he will recognize that he is presumed to be not the owner anyway, and must meet a formidable, if not impossible, burden of proof—a burden which continues to exist as evidence against him all the way to the Supreme Court of his state. Is this, in truth, the "protection of equal laws"?

It may be said that Fred Oyama is no worse off than Fred Johnson, because Fred Johnson would be in the same position as Fred Oyama if Mr. Oyama had given his property to Fred Johnson. That we agree, is true, but it is wholly unrealistic. One cannot ignore the parent-child relationship. Fred Oyama, as an American citizen, has every right to expect that the normal, usual, human relations will be permitted to him, as well as to anyone else. Not so, under this law. His father, under the decision below, cannot make gifts to him of land like this. The expectancy of parental assistance is, *pro tanto*, denied him. Maybe it is true that Fred Johnson can't get gifts from Mr. Oyama, nor that anyone else can get such gifts, without being subject to the same disability. But those persons have not suffered thereby; they have no reason to expect such gifts. Fred Oyama

does. He is denied one of the privileges inhering in every other citizen except those whose parents happen to be Japanese—the privilege of the unlimited bounty of parents anxious, as are all parents, to advance his welfare as best they can. A law which thus discriminates against him cannot meet the tests which our Constitution guarantees.

II.

THE ALIEN LAND LAW, AS APPLIED AND AS CONSTRUED IN THIS CASE, DEPRIVES KAJIRO OYAMA, AN ALIEN OF JAPANESE RACE, OF THE EQUAL PROTECTION OF THE LAWS

The State of California takes the position that the ineligibility of Oyama the father to have any beneficial interest whatsoever in agricultural land determines the right of Oyama the son to receive a gift of such land from his father. But even assuming that the transfer of the land to Fred Oyama was colorable merely and that the beneficial interest in the property was in Kajiro Oyama, we believe that the escheat action must nonetheless fail. The Alien Land Law, as applied and as construed in this case must be held to violate the Constitution of the United States.

The ban against holding any interest in agricultural land is race legislation aimed directly at the Japanese. Use of the term "aliens ineligible to citizenship" is merely a veil which this Court will pierce. *Yu Cong Eng v. Trinidad*, 271 U. S. 500, 525, 528. The Supreme Court of California has declared that the object of the Alien Land Law is "to discourage the coming of Japanese into the State." *Estate of Yano*, 188 Cal. 645, 658, 206 Pac. 995, 1001. The same form of words, with unmistakable intent to affect only Japanese, is apparent in

other California statutes. As recently as 1943 the California Legislature enacted a statute discriminating against Japanese aliens by name in connection with fishing licenses. Cal. Stats. (1943) c. 1100. The matter was considered further by the California Legislature and in 1945 a Senate Committee reported that there was "danger of the present statute being declared unconstitutional, on the grounds of discrimination, since it is directed against alien Japanese." The Committee recommended that the legal question could "probably be eliminated by an amendment which has been proposed to the bill which would make it apply to *any alien who is ineligible to citizenship.*" [Italics supplied.] Report of the Senate of California, May 1, 1945, pp. 5, 6. The law was so amended. Cal. Stats. (1945) c. 181.

Not only is the statute intended to apply solely to Japanese, but it is enforced solely against them by the state. *Yick Wo v. Hopkins*, 118 U. S. 356, 374; *Hill v. Texas*, 316 U. S. 400, 404. There are 39 reported cases decided in the California appellate courts involving the Alien Land Law; of these only 5 affected non-Japanese aliens and none of these 5 were proceedings brought by the state. Since the evacuation of the Japanese from California approximately 60 proceedings have been instituted under the statute and every one has been filed against a Japanese.

Finally, it should be noted that—whatever color of propriety may once have existed in the words "aliens ineligible to citizenship"—the successive narrowing of this group by Congress through amendment of the Naturalization Laws has left this restriction applicable, for practical purposes, to but one racial group in California, the Japanese. Formerly the right to become a naturalized citizen was denied, with minor exceptions to all but white persons and persons of African nativity

or descent. R. S. § 2169; Act of February 18, 1875, c. 80, § 1, 18 Stat. 318; Act of May 9, 1918, c. 69, § 2, 40 Stat. 547. Descendants of all races indigenous to the Western Hemisphere were removed from the restriction by the Act of October 14, 1940, c. 876, § 303, 54 Stat. 1140. More recently, the ban against the Chinese (Act of December 17, 1943, c. 344, § 3, 57 Stat. 601) and the Filipinos and peoples indigenous to India (Act of July 2, 1946, c. 534, § 1, 60 Stat. 416; U. S. Code Cong. Service (1946) p. 401) was removed.

It is clear therefore that the Alien Land Law discriminates against aliens of Japanese origin, that this is its purpose, that it has been so administered by the State of California and that this is its necessary effect in view of the changes in the Naturalization Laws. The question is whether such discrimination is left untouched by the requirements of the 14th Amendment to the United States Constitution.

For support of this discrimination the State of California relies on a series of companion cases decided by this Court in the 1923 term, in which the constitutionality of the Alien Land Law was sustained. *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 13 and *Frick v. Webb*, 263 U. S. 326. *Terrace v. Thompson*, 263 U. S. 197, which was relied upon in these cases, was the only decision which discussed the constitutional issue at any length. It involved a Washington statute which prohibited the holding of any right to or benefit in land by all aliens, except those who in good faith declared their intention to become United States citizens. Mr. Justice Butler passed over the contention that the state discriminated arbitrarily against one of the defendants who was of Japanese origin because of his race and emphasized that the adoption by the state of a classification for purposes of land ownership which dis-

tinguished between aliens on the basis of eligibility to citizenship was proper. Mr. Justice Butler accepted without analysis the reasoning of the District Court of the Western District of Washington that one who could not become a citizen "lacks an interest in, and the power to effectually work for the welfare of, the state" and that, thus, the "state may rightfully deny him the right to own and lease real estate within its boundaries," since, otherwise, "it is within the realm of possibility that every foot of land within the state might pass to the ownership or possession of non-citizens." *Id.* at 220-221.

Whatever may have been the Supreme Court's understanding of the purport of this legislation in 1923, this Court should now meet clearly the fact that we are dealing with a statute—not really addressed to a theoretically broad class of ineligible aliens—but which is aimed in intent and application at but one race. Certainly the State of California should not be permitted to do by indirection what it cannot do directly.

This Court has repeatedly held that in cases involving civil liberties a much more rigid test will be applied to state action than in cases involving the normal regulation of ordinary commercial transactions. *Thomas v. Collins*, 323 U. S. 516, 527, 529-532; *Schneider v. Irvington*, 308 U. S. 147, 161; *Thornhill v. Alabama*, 310 U. S. 88, 95-96. An intrusion by a State in this domain can be supported "only if grave and impending public danger requires this." *Thomas v. Collins*, *supra*, p. 532. The Alien Land Law should be judged by this test. In intent and effect on the lives of aliens of Japanese origin it is not distinguishable from the kind of legislation which this Court has struck down as not meeting this test. As this Court said in *Korematsu v. United States*, 323 U. S. 214, 216:

"It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. * * * Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can."

But whether "the clear and present danger rule" or the "reasonable classification rule" be applied, the Alien Land Law meets neither test. A statutory classification made for purposes of discrimination is proper only when there is a reasonable relationship between the characteristics distinguishing the class, the discrimination and the evils at which the legislation is addressed. *Atchison, Topeka & Santa Fe v. Mathews*, 174 U. S. 96, 104-105; *Smith v. Cahoone*, 283 U. S. 553, 556-557. Here the class purports to be "all aliens other than those * * * eligible to citizenship." Alien Land Law, Sections 1 and 2. The discrimination is the ban which deprives them of the right to "acquire, possess, enjoy, use, cultivate, occupy [or] transfer [agricultural land] or any interest therein, * * * [or] have in whole or in part the beneficial use thereof * * *". Alien Land Law, Section 2; Treaty of Commerce and Navigation between the United States and Japan, proclaimed April 5, 1911, 37 Stat. 1504. The stated purpose, according to the Supreme Court of California, is that recited by Mr. Justice Butler in *Terrace v. Thompson*, *supra*, pp. 220, 221 (R. 114-115).

That there is a class of aliens ineligible to citizenship generally identifiable as such is, of course, conceded, albeit the "ineligible alien" language is but a subterfuge for a classification that, in intent and actual practice, is limited to a class within the class. But the mere existence of distinguishing characteristics—whether they be of the Japanese class within the class

or of the purported broader class of "ineligible aliens"—does not of itself support the discrimination. In the absence of a clear justification for the discrimination it must fall.

The classification is no less arbitrary because it adopts by reference the standards established by Congress for naturalization of aliens. The measure of the authority of the state to discriminate in the ownership of land is not that of the specific authority vested in the Congress over naturalization under Article I, Section 8. The use of the "ineligible alien" classification by the state must meet the requirements of the 14th Amendment on its own merits. Moreover, this classification can certainly not be used as a cloak for specific discrimination against Japanese alone.

Nor should there be any doubt as to the nature of the discrimination. No broader language could have been designed to make more absolute the ban against the use of agricultural land by Kajiro Oyama. No special use is forbidden which a legislature might determine to be against public policy—abuse of land might properly be prevented by limits on use; harmful occupation or nuisances might be controlled or regulated. Indeed, if danger to the state be the issue, use of land adjacent to military or naval stations might be denied. But when every kind of land use is forbidden, the legislation is necessarily being aimed not at use *as such*, but at the class, and such legislation is improper. *Buchanan v. Warley*, 245 U. S. 60, 74, 82.

What, then, is the purpose of the Alien Land Law in excluding Japanese from holding any kind of interest in agricultural land? The Supreme Court of California has told us that it is to "discourage the coming of Japanese into the state . . ." *Estate of Yano, supra*, p. 1001. This alone is sufficient to seal its legal doom. Although

this explanation is not sufficient under the Constitution, it is perhaps more credible than the explanation that "one who is not a citizen and cannot become one lacks an interest in, and the power to effectively work for the welfare of, the state", and that, without the ban, "every foot of land within the state might pass to the ownership or possession of non-citizens". *Terrace v. Thompson*, *supra*, pp. 220-221; applied with respect to the California Alien Land Law by Mr. Justice Butler in *Porterfield v. Webb*, *supra*, p. 233, and adopted by the California Supreme Court in this case (R. 115). See also *Mott v. Cline*, 200 Cal. 434, 253 Pac. 718, 724, where the California Supreme Court stated that the "ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of a state." The fact that a farmer such as Kajiro Oyama, living in this country, devoting his life to the soil and raising children who are privileged to be American citizens, cannot himself exercise this privilege has nothing to do with his character or his loyalty to the United States. These very meaningful words of this Court are applicable to Kajiro Oyama:

"* * *. Nothing in this record indicates, and we cannot assume, that he came to America for any purpose different from that which prompted millions of others to seek our shores—a chance to make his home and work in a free country, governed by just laws, which promise equal protection to all who abide by them." (*Ex parte Kawato*, 317 U. S. 69, 71.)

It is by an act of Congress, not one of personal volition, that Kajiro Oyama cannot become a citizen. The German alien or the British alien may hold agricultural land in California. There is nothing about the Japanese alien to distinguish him from the German alien or

the British alien except his race and color. But "loyalty is a matter of the heart and mind, not of race, creed, or color". *Ex parte Endo*, 323 U. S. 283, 302. Would the mere fact of eligibility to citizenship automatically create a presumption of loyalty or of good character where there was neither loyalty nor good character before? On the contrary, it would seem that one eligible to citizenship who has not declared his intention of becoming a citizen would be more suspect than one ineligible for reasons beyond his control. As a farmer in and resident of the State of California, the welfare of that state is the welfare of Kajiro Oyama. He exercises the rights of a citizen except for political rights. Perhaps as a member of a minority group deprived of these rights, his appreciation of them is even greater than that of many citizens. If it is a desire to promote in its inhabitants "an interest in, and the power to effectively work for, the welfare of the state" that prompts California, then the paradox is that by this very legislation the state limits that interest and that power so far as the Japanese alien is concerned.

Certainly the possibility that all of the land in the state might be owned by ineligible aliens is no argument for the constitutionality of this measure. This possibility is so remote as hardly to require consideration. The Alien Land Law was first enacted in 1913, and the children and grandchildren of Japanese aliens are citizens and eligible to hold land. In 1940 there were only 33,569* Japanese aliens in California as compared to a total population of 6,907,387**. If the "ownership of the soil by persons morally bound by obligations of cit-

* Final Report, Japanese Evacuation from the West Coast (1943), p. 410.

** United States Census (1940).

izenship is vital to the political existence of a state", this would not justify banning but a handful of one race of aliens from the land.

Finally, is ownership of agricultural land any more vital to the political existence of the state than ownership of factories or stores? Such ownership by Japanese aliens is permitted under the Alien Land Law. This Court will take judicial notice of the fact that the State of California still exists politically even though such ownership has continued to the present day. Moreover, the vast majority of states have no such limitations as are considered here and comparison with California shows no injury by reason of alien land ownership.

III

THE DECISION OF THE COURT BELOW, IN DENYING PETITIONERS THE PROTECTION OF THE CALIFORNIA STATUTE OF LIMITATIONS, DENIES THEM DUE PROCESS OF LAW

Section 312 of the Code of Civil Procedure of California provides:

"Civil actions, without exception, can only be commenced within the period prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute."

A later section of the Code makes clear that "action" is not used in any restrictive fashion. Section 363 states:

"The word 'action' as used in this title is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature."

Various periods of limitation are set out for various types of civil actions. The longest period of limitations is that contained in Section 315. It provides:

"The people of this state will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the people to the same, unless—

"1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced; or,

"2. The people, or those from whom they claim, shall have received the rents and profits of such real property, or some part thereof, within the space of ten years."*

Petitioners relied upon the statute of limitations with respect at least to the property transferred to Fred Oyama in 1934, more than ten years prior to the date of institution of this suit. The court below, however, managed the extraordinary conclusion that no statute of limitations applied. The court stated (R. 119):

"* * * the 'different limitation' mentioned in section 312 clearly should be construed to include no limitation as to an action commenced under a statute which specifies that time shall not bar the right to invoke its provisions."

* The Code also applies a one-year statute of limitations to "An action upon a satute for a forfeiture or penalty to the people of this state" (Section 340); and a three-year limitation to actions for relief on the ground of fraud (Section 338(4)).

The court relies upon a section of the Alien Land Law which was not in that law when this action was commenced, and which was not in the law when the 10-year period expired on the tract acquired by Fred Oyama in 1934. The new provision, which was added to the legislation in 1945, provided:

“No statute of limitation shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions”

of the Alien Land Law. The 1945 Act further stated, “The amendment made by this act does not constitute a change in, but is declaratory of, the pre-existing law.”

It is true that the court below stated that even prior to this 1945 provision the Alien Land Law was “inconsistent with a statute of limitations”. It may be doubted whether under the provisions above quoted any such construction is within even the realm of judicial interpretation. “Civil actions, without exception,” is language which seems scarcely susceptible of construction. In any event, it seems apparent that the court below relies upon the 1945 amendments to a very considerable extent.

If that be so, it is submitted that the lifting of the bar of the statute of limitations to destroy title which Fred Oyama or Kajiro Oyama had in real estate prior to the passage of that act is unconstitutional. *Campbell v. Holt*, 115 U. S. 620; *Chase Securities Corp. v. Donaldson*, 325 U. S. 304.

CONCLUSION

WHEREFORE, it is respectfully requested that this petition for a writ of certiorari to the Supreme Court of California be granted.

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February 25, 1947.

APPENDIX

The California Alien Land Law (Alien Property Initiative Act of 1920, as amended, Stats. (1921) p. lxxxiii, in effect December 9, 1920; amended by Stats. (1923) c. 441, p. 1020; Stats. (1927) c. 528, p. 880; Stats. (1943) c. 1003, p. 2917, c. 1059, p. 2999; Stats. (1945) c. 1129, p. 2114, c. 1136, p. 2177; Deering's Gen. Laws, Act 267) provides in part as follows:

"Sec. 1. All aliens, eligible to citizenship under the laws of the United States may acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state. (Amended by Stats. 1923, p. 1021.)

"Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy, use, cultivate, occupy and transfer real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the manner and to the extent, and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise. (Amended by Stats. 1923, p. 1021.)

* * * * *

"Sec. 4. Whenever any alien mentioned in Section 2 hereof is appointed by any court as a guardian of his native-born minor child or children, or as a guardian of any other person or persons, it shall be unlawful for such said alien guardian to farm, operate or manage any land or lands held by such guardianship estate, except solely for the use and benefit of the ward or wards of said estate, or to enjoy, possess or have, in whole or in part, the beneficial use of any such said land or lands so held or possessed or which belong to any such said guardianship estate, nor shall said alien guardian

have or enjoy or receive directly or indirectly the beneficial use of such said lands or the proceeds received from the sale of any crops produced, grown or raised thereon, it being the intent of this section that no alien mentioned in Section 2 hereof shall by any guardianship proceedings whatsoever evade or violate or seek to evade or violate any of the provisions of this statute.

"In all such said guardianship estates, the alien guardian must make every year a report to the court in which said guardianship estate is pending, showing in detail and supported by receipts, all money disbursed, expended and paid out by said guardian, to whom same was paid, for what purpose, and the date of such said disbursement or payment. Also all money received, from whom received, for what purpose received, and the date of the receipt thereof. A copy of said report shall be served by the guardian on the district attorney of the county, and said guardian shall give said district attorney notice of the hearing of said report. Failure on the part of the said alien guardian so to make such report, or serve such copy thereof, or notify such district attorney shall constitute a direct violation hereof, for which said guardian may be prosecuted and punished as set forth in Section 10a of this act.

"Said alien guardian shall include in such report such other matters and items as the court may require, the said alien guardian to be under the absolute jurisdiction and control of the court at all times; and the court may from time to time require said alien guardian to make special reports on all things pertaining to said guardianship estate. The court may also require the ward of any such said guardianship estate to be produced in court whenever said court may deem such procedure necessary and proper for the protection of said guardianship estate.

"The court shall have the power to fix the compensation of the said alien guardian at such amount as the court may determine. The court shall also fix the amount of bond to be given by said alien guardian. The court shall also fix and determine the amount of attorney's fees in all such guardianship matters.

"Whenever any alien guardian shall fail, neglect or refuse to comply with the terms and provisions hereof, he may be removed as guardian of said estate by the court, when deemed to be for the best interests of said estate.

"The court shall require a final account to be filed, on behalf of any such guardianship estate at the time the ward or wards shall become 21 years of age. The court may also require such matters to be included in said report as said court may deem to be necessary and proper. No such guardianship estate shall be finally closed until the final report shall have been filed and approved by the court. (As amended by Stats. 1943, Ch. 1059, Secs 1, 2.)

"Sec. 5. (a) The term 'trustee' as used in this section means any person, company, association or corporation that as guardian, trustee, attorney in fact or agent, or in any other capacity has the title, custody or control of property, or some interest therein, belonging to an alien mentioned in section two hereof, or to the minor child of such alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it:

(b) Annually on or before the thirty-first day of January every such trustee must file in the office of the secretary of state of California and in the office of the county clerk of each county in which any of the property is situated, a verified written report showing:

- (1) The property, real or personal, held by him for or on behalf of such alien or minor;
- (2) A statement showing the date when each item of such property came into his possession or control;
- (3) An itemized account of all such expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in re-

spect to land and the handling or sale of products thereof.

(c) Any person, company, association or corporation that violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(d) The provisions of this section are cumulative and are not intended to change the jurisdiction or the rules of practice of courts of justice.

* * * * *

"Sec. 7. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in Section 2 of this act, or by any company, association or corporation mentioned in Section 3 of this act, shall escheat as of the date of such acquiring, to, and become and remain the property of the State of California. (As amended by Stats. 1945, Ch. 1129.)

* * * * *

"Sec. 8.5. No statute of limitations shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions of this act. (Added by Stats. 1945, Ch. 1136, Sec. 1.)

(The statute adding this section provides further: "Sec. 2. The amendment made by this act does not constitute a change in, but is declaratory of, the pre-existing law.")

"Sec. 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the State and the interest thereby conveyed or sought to be conveyed shall escheat to the State as of the date of such transfer, if the property interest involved is of such a character that an alien mentioned in Section 2 hereof is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transfer-

ring, transmitting or inheriting it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

"A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:

"(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof;

"(b) The taking of the property in the name of a company, association or corporation if the memberships or shares of stock therein held by aliens mentioned in Section 2 hereof, together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a majority of the membership or issued capital stock of such company, association or corporation;

"(c) The execution of a mortgage in favor of an alien mentioned in Section 2 hereof if such mortgagee is given possession, control or management of the property.

"In each of the foregoing instances the burden of proof shall be upon the defendant to show that the conveyance was not made with intent to prevent, evade or avoid escheat.

* * * * *

"The enumeration in this section of certain presumptions shall not be so construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein. (Amended by Stats. 1945, Ch. 1129, Sec. 4)"

* * * * *

SEP 30 1947

IN THE
Supreme Court of the United States

OCTOBER TERM, 1947.

FRED Y. OYAMA AND KAJIRO OYAMA, *Petitioners*,

v.

STATE OF CALIFORNIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
CALIFORNIA

BRIEF FOR PETITIONERS

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1947.

No. 44.

FRED Y. OYAMA AND KAJIRO OYAMA, *Petitioners*,

v.

STATE OF CALIFORNIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
CALIFORNIA

BRIEF FOR PETITIONERS

OPINIONS BELOW

The findings of fact and conclusions of law in the Superior Court (R. 58-64) are not reported. The opinion in the Supreme Court of California (R. 102-120) is reported in 29 Advance California Reports 157; 173 P.(2d) 794.

JURISDICTION

The judgment of the Supreme Court of California was entered October 31, 1946 (R. 121). An order denying these

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petitioners' petition for rehearing was entered November 25, 1946 (R. 120). Petition for a writ of certiorari was filed on February 25, 1947, and was granted on April 7, 1947, 330 U. S. 818. The jurisdiction of this Court rests upon Section 237(b) of the Judicial Code, as amended.

QUESTIONS PRESENTED

1. Whether the Alien Land Law, as applied in this case, deprives petitioner Fred Oyama, an American citizen, of the equal protection of the laws and of the privileges and immunities of a citizen, in violation of the Fourteenth Amendment to the Constitution;
2. Whether the Alien Land Law, as enforced and as applied in this case, deprives petitioner Kajiro Oyama, an alien of the Japanese race, of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution.
3. Whether the decision of the Supreme Court of California, holding that no statute of limitations is applicable to actions for escheat under the Alien Land Law, is not a retroactive reopening of a vested title to real estate which also violates the Fourteenth Amendment.

STATUTES INVOLVED.

The relevant provisions of the California Alien Land Law (Alien Property Initiative Act of 1920, Cal. Stats. (1921) p. lxxxiii), as amended, are set out in Appendix A, *infra*.

STATEMENT.

On August 28, 1944, the State of California filed a petition under the California Alien Land Law to declare an escheat to the State of certain agricultural lands (R. 1). Fred Oyama, a minor and an American citizen (R. 59), and his father and guardian, Kajiro Oyama, an alien of the Japanese race (R. 58), who are now petitioners here, were named among several other defendants (R. 1). The petition alleged that the land in question consisted of two par-

cells. One was alleged to have been purchased on August 18, 1934, by Kajiro and Kohide Oyama; title being conveyed directly to Fred Oyama and a deed to that effect duly recorded (R. 2-3). The other was alleged to have been transferred to Fred Oyama on December 17, 1937, by an order of the Superior Court of San Diego County confirming the sale to Fred Oyama from the estate of June Kushino, a minor, and a certified copy of the order was duly recorded (R. 6). The petition prayed for an escheat as of the dates specified above (R. 7-8).

A demurrer having been filed (R. 18) and overruled (R. 51), the matter was tried upon the petition and answer (R. 53-55). At the trial, it was shown that on March 1, 1935, Kajiro Oyama petitioned the San Diego Superior Court to be appointed guardian of Fred Oyama, stating that the latter was his minor son and was the owner of the parcel of land conveyed in 1934. Subsequently he filed with the court a sworn Inventory and Appraisal, being a "true statement of all the estate of" his son Fred Oyama which described the property in question. No reference was made in this sworn statement to the holding of an interest in this land by anyone other than Fred Oyama nor was any such interest referred to by the two independent appraisers. On August 15, 1935 the father was appointed guardian by the court and filed the necessary bond. Subsequently, with permission of the court, Kajiro Oyama borrowed money upon and mortgaged the property as guardian for Fred Oyama (P. Exh. 1). The Clerk of the San Diego Superior Court identified the guardianship records of Fred Oyama and June Kushino, and testified that no reports had been filed with his office on behalf of Fred Oyama under the Alien Land Law (R. 81-84).

The only other witness at the trial was John C. Kurfurst, who was left in charge of both parcels of property.

¹ The exhibits are not included in the printed record, but are on file with the Clerk.

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when petitioners, along with all other persons of Japanese origin and ancestry, were evacuated from the Pacific Coast (R. 84). He testified that the Oyamas were not occupying the property at that time but rather that it was being occupied by the Kushino family (R. 81-82). After the evacuation he rented the property. Kurfurst kept all the proceeds in his own bank account, making no payments to the owner of the land until a representative of the War Relocation Authority came to discuss the matter with him (R. 84-85). Thereafter he transmitted checks amounting to \$16 and \$330 to Fred Oyama covering certain of the rentals minus expenses in connection with the property which he himself incurred (R. 85). These checks were returned to Kurfurst endorsed "Fred Oyama" (R. 86; P. Exhs. 3, 4). No evidence was offered proving that the signature was by anyone other than Fred Oyama, the son. On June 7, 1944, Fred Oyama advised Kurfurst by letter that the property was being turned over to someone else to be managed (R. 87; P. Exh. 6).

Although on direct examination Kurfurst testified that he knew the father as "Fred Oyama", he stated that he had never heard the father refer to himself by that name (R. 87). Moreover, on cross-examination he testified that on one occasion he had heard the father say, "Some day the boy will have a good piece of property because that is going to be valuable" (R. 90). Also, Kurfurst stated that in a letter entitled "Re: Fred Yoshihiro Oyama and June Kushino" which he wrote to the War Relocation Authority regarding the property (D. Exh. A), he meant by "Fred Oyama" the boy, not the father (R. 91-92). Also, he understood a letter written by the War Relocation Authority to Kurfurst regarding "Fred Oyama" (D. Exh. B) to refer to the son and not the father (R. 92). Moreover, he admitted that he knew "that the father was running the boy's business" when he was in California and that "the property belonged to the boy and to June Kushino" (an American-born Japanese) (R. 94). Finally, the receipts

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issued by the War Relocation Authority for the monies transmitted by Kurfurst (D. Exh. D) were for the account of Fred Oyama, not of Kajiro Oyama (R. 94-95).

The Decisions Below. The language in which the findings of the Superior Court are couched is substantially identical to that of the charges of the State (R. 1-8). In essence the Superior Court found that the two pieces of land were purchased by Kajiro Oyama and Kohide Oyama, the boy's mother; that, although the first parcel was deeded to Fred Oyama in 1934 and recorded in his name and the estate of June Kushino transferred the second parcel to Fred Oyama in a guardianship proceeding and the order of the court authorizing the transfer to Fred Oyama was recorded; the father and mother entered into possession of the property and used it as their own, and have had the beneficial use and enjoyment of the land. The Court also found that the father had not filed financial reports regarding the property under the Alien Land Law as guardian of Fred Oyama and that both transfers to Fred Oyama were subterfuges and frauds on the State. The court further found that these "acts" were done in an attempt to "prevent, evade and avoid" escheat and that the State was entitled to have the property declared escheated (R. 58-63).

The Supreme Court of California sustained the Superior Court principally on the basis of earlier decisions of this Court holding that the exclusion of "ineligible aliens" from having any interest in agricultural land is a proper exercise of the police power of the State. The court further held that Fred Oyama was denied no constitutional guarantees because the property passed to the State by virtue of deficiencies existing in the alien father, not the citizen son (R. 117). Finally, the trial court's findings of fact upon the basis of which the land was declared to escheat were found to be fully supported by the evidence (*ibid.*). Two of the seven justices did not take part in the decision; one more concurred specially solely on the ground that the decisions of this Court "are controlling until such

time as they are reexamined and modified by that court" (R. 120). Judgment was entered on October 31, 1946, affirming the judgment of the Superior Court (R. 121).

A petition for rehearing was filed, and was denied on November 25, 1946 (R. 120), one judge voting for the rehearing. The petition for writ of certiorari was filed on February 25, 1947, and was granted on April 7, 1947. 330 U. S. 818.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of California erred:

1. In failing and refusing to hold that the California Alien Land Law of 1920, as amended, as applied in this case, deprives petitioner Fred Oyama of the equal protection of the laws and of the privileges and immunities of a citizen, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.
2. In failing and refusing to hold that the California Alien Land Law of 1920, as enforced and as applied in this case, deprives petitioner Kajiro Oyama of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.
3. In applying a statute by which California had removed any statute of limitations on escheat actions to an action brought subsequent to the date when the prior period of limitations had expired, in violation of the Fourteenth Amendment to the Constitution of the United States.
4. In affirming the decision of the Superior Court.
5. In failing and refusing to dismiss the petition of the State of California.

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SUMMARY OF ARGUMENT

I.

The decision of the court below deprives petitioner Fred Oyama, of the equal protection of the laws and the privileges and immunities of a citizen. In California minor children other than those of Japanese ancestry may receive gifts of real estate from their parents with no presumption that the transaction is illegal. The Alien Land Law as applied here requires Fred Oyama, solely because he is the son of a Japanese alien, to defend his gift against the claim of the State that he had never received genuine title and that instead the property had in reality gone to his parents and thence to the State.

Moreover, it is virtually impossible for Fred Oyama to defend his gift. The court below inferred that the transaction was colorable from the fact that the property was conveyed to the son. That makes it impossible for Fred Oyama ever to receive a gift of land from his parents; every act of the father to effectuate a proper transfer would be evidence of an improper transfer. So, too, is the effect of the statutory presumption that the conveyance was made with intent to "prevent, evade or avoid" escheat which came into effect merely upon proof that the father had paid for the land and the son was the transferee. This presumption is such, and is given such overwhelming evidentiary effect, that it establishes a substantive rule that a Japanese alien cannot make a bona fide gift of land to his son. As such it is unconstitutional. *Heiner v. Donnan*, 285 U. S. 312.

Nor may any inference of intention to violate the statute be drawn from the father's failure to file guardianship reports or to testify below. Sons of those other than Japanese aliens are not faced with the loss of their property because of the failure of their parents to perform such acts. Moreover, it is far from clear that the father was required, or may fairly have been expected to understand that he was required, to file such reports until 1943 when the father had

been evacuated from California and no longer had supervision of the son's land.

II.

The Alien Land Law is race legislation aimed directly at the Japanese and is in violation of the Fourteenth Amendment. Use of the term "aliens ineligible to citizenship" is merely a guise. The object of the law is "to discourage the coming of Japanese into the State". *Estate of Yano*, 188 Cal. 645, 658, 206 Pac. 995, 1001 (1922). Not only is the statute intended to apply solely to Japanese but it has had a consistent history of anti-Japanese enforcement. This is demonstrated by the escheat proceedings which have been filed by the State and the recorded cases involving the law. Although the phrase "ineligible to citizenship" in the Alien Land Law may imply more than racial ineligible, no one has ever been barred from land ownership under it except for reasons of racial ineligible. Moreover, the successive narrowing of the group "aliens ineligible to citizenship" by amendment of the federal naturalization laws has left the restriction on land ownership applicable in practice to but one racial group in California—the Japanese.

As an anti-Japanese law the Alien Land Law is in violation of the Fourteenth Amendment. Restrictions on the holding of land by aliens are anachronistic remnants of the Middle Ages originally based on the political relationships inherent in the feudal system. But the Alien Land Law has no basis even in such historical rationalization. It seeks to discriminate *among* aliens and to prevent one small group of them from approaching agricultural land except as day-laborers. The denial to them—on a race basis—of a fundamental right normally open to all meets neither the "clear and present public danger" test nor the "reasonable classification test". *Thomas v. Collins*, 323 U. S. 516, 527, 529-532; *Korematsu v. United States*, 323 U. S. 214, 216; *Buchanan v. Warley*, 245 U. S. 60, 74, 82. The use of the term "aliens ineligible to citizenship" is merely a veil

which this Court will pierce. *Yick Wo v. Hopkins*, 118 U. S. 356, 374.

III.

The Court below and the State of California rely on a series of companion cases decided by this Court in 1923, *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313; *Frick v. Webb*, 263 U. S. 326, and *Terrace v. Thompson*, 263 U. S. 197. These cases attempted to justify the California statute and a different Washington statute on the ground that aliens ineligible for citizenship constitute a class from whom the privilege of land ownership may be withheld. But the mere existence of distinguishing characteristics—whether they be of the Japanese class within the class or the purported broader “ineligible alien” class does not of itself support this discrimination. Nor is the authority of the State to discriminate in the ownership of land measured by the specific authority vested in Congress over naturalization. Equally unreasonable is the suggestion that the discrimination is justified because “one who is not a citizen and cannot become one lacks an interest in, and the power to effectively work for the welfare of, the state”, and that, without the ban, “every foot of land within the state might pass to the ownership of non-citizens.” *Terrace v. Thompson, supra*, 263 U. S. at pp. 220-222. Neither the characteristics nor the numbers of ineligible aliens bear out this suggestion. Eligibility for citizenship does not determine character or loyalty. *Ex parte Kawato*, 317 U. S. 69, 71; *Ex. parte Endo*, 323 U. S. 283, 302. There is no relationship between these purposes and ownership of agricultural land. Nor is the fear that all the land in the State might be owned by ineligible aliens consistent with good sense or the actual record of population trends and land holding in California.

Conditions have changed since the earlier cases. Successive modification of the naturalization laws have made the “ineligible alien” class practically synonymous with

"Japanese". Subsequent events have shown that the fears which generated and the policies which underlay the Alien Land Law had no reasonable basis. The almost exclusively anti-Japanese record of enforcement and the actual record of population and land holding in California and the other facts as to the origins and history of the law were not brought to the attention of the Court. A different constitutional answer is demanded in the light of the change in facts:—*Nashville C. & St. L. R. R. v. Walters*, 294 U. S. 405, 415. Experience during the last war has shown that denying Japanese aliens the right to own land is unnecessary to protect the "safety" of the State. The federal government assumed complete control over Japanese aliens. If the State insists on relying on the discredited rationalization of State safety it necessarily admits that California has improperly invaded a field which is and should be the exclusive concern of the federal government. *Hines v. Davidowitz*, 312 U. S. 52, 64-66. This racially discriminatory law also conflicts with the pledge of the United States in the United Nations Charter to act to achieve "universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language, or religion."

IV.

The Court below denied petitioners the protection of the California statute of limitations. Suit by the State with respect to at least one of the two tracts of land involved in this proceeding was barred by the statute of limitations when this action was begun and when the California legislature added to the Alien Land Law a provision stating that no statute of limitations should bar any escheat action commenced pursuant to its provisions. The lifting of the bar of the statute of limitations to deprive the petitioners or either of them of their land is unconstitutional. *Stewart v. Keyes*, 295 U. S. 403.

ARGUMENT**I****THE ALIEN LAND LAW, AS HERE CONSTRUED AND APPLIED, DEPRIVES FRED OYAMA, A CITIZEN, OF THE EQUAL PROTECTION OF THE LAWS AND OF THE PRIVILEGES AND IMMUNITIES OF A CITIZEN.**

Fred Oyama, born in California in 1928, is an American citizen (R. 59). In 1934, he received the title to certain agricultural land in California, and in 1937 received the title to an additional tract of similar land (R. 6, 60, 62). The consideration for the land in each instance was paid by his parents (R. 60, 62), who were aliens, born in Japan (R. 58). Now, by an escheat proceeding, it is claimed that this property may be taken from Fred Oyama by the State of California. The circumstances are such that it is abundantly clear—indeed it will no doubt be admitted—that if Fred Oyama's parents had been German aliens, or British aliens, instead of Japanese aliens, Fred would still have his land. We believe it plain that the statute, as thus construed, discriminates against Fred Oyama solely because of his racial origin. As such, we believe, it offends the equal protection and privileges and immunities clauses in Section 1 of the Fourteenth Amendment. By the same token, it is even more clearly in conflict with the specific provision of Section 42 of Title 8, U. S. C., which provides, "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

A few preliminary remarks will clarify the matter. Under the law of California—at least as respects all except American citizens of Japanese ancestry—a minor child is clearly entitled to take and hold real estate of all kinds, as well as personal property. *Estate of Yano*, 188 Cal. 645, 206 Pac. 995, 997 (1922). Moreover, as stated by the Supreme Court of California in the *Yano* case, *supra*, (206 Pac. at p. 998):

"Delivery to, and acceptance by, an infant, will be presumed. When a deed clearly beneficial to an infant is given to him, his acceptance will be presumed, and the recording of the deed is a sufficient delivery."

In accord are *DeLevillain v. Evans*, 39 Cal. 120, 123; *Donner v. Palmer*, 31 Cal. 500, 518; *Turner v. Turner*, 173 Cal. 782, 786, 161 Pac. 980, 982. In the *Yano* case, the court dealt with the possibility of a resulting trust in favor of the parent, due to his payment of the consideration, and ruled that no such trust would arise (*ibid.*). To the same effect are *People v. Fujita*, 215 Cal. 166, 169, 8 P. (2d) 1011, 1012; *Russ v. Mebius*, 16 Cal. 350, 356; *Hamilton v. Hubbard*, 134 Cal. 603, 605, 65 Pac. 321-322. Finally, as the court stated in the *Yano* case, (206 Pac. at p. 998):

"The act of petitioner, in securing conveyances of land to his daughter, while confessedly carried out because the law of California did not permit him to buy it for himself, was in no sense unlawful, since the daughter is a citizen of the United States and entitled to acquire and own real estate."

We have, then, a situation where, by state law, it is recognized not only that it is proper for a parent to make an effective gift of real estate to a minor child, but that there is, even in the case of an ineligible alien parent, no taint of illegality in the transaction. It is lawful, normal, and proper in all respects.

Fred Oyama, however, although he received the record title to the land in question, had the misfortune of being, in California, by reason of the decision of the California courts in the instant case, something less than a full American citizen, because his father and mother were Japanese. Had he been Fred Johnson, he would have grown to manhood in full ownership of his land; no procedure of the State of California could have deprived him of it without adequate compensation. Being Fred Oyama, he was faced with the necessity of defending the gift he received against the claim of the State that the property had in reality gone

to his parents and thence to the State by virtue of Section 7 of the Alien Land Law, *infra*. Unlike other children, his acceptance of the land will *not* be presumed (*cf. Estate of Yano*, quoted *supra*); he must prove that he got it. This, alone, it would appear, denies to him the equal protection of the laws.

We need not stop there, however. An examination of the facts upon which the court below relies serves to emphasize not only that Fred Oyama must make proof which Fred Johnson need not make, but also that the proof required is well-nigh impossible of attainment. The evidence which the court below finds sufficient to warrant holding that Fred Oyama never really received the gift from his parents is summarized by the court at R. 117-118. The court refers to four items of "evidence", and states that "the inferences to be drawn from [them] . . . are ample" to support the trial court's finding of a violation of the statute. Each item is worthy of further analysis.

1. The first item referred to is (R. 117):

" . . . the evidence that the real property was conveyed to the son, thereby putting it beyond the power of the father to deal with the property directly . . . "

With due respect, we utterly fail to see how, if that be evidence *against* the validity of the transaction, Fred Oyama ever had a chance. The California law requires, albeit we think unconstitutionally, that ineligible aliens not own land, nor even have the use of agricultural land. Yet the court states that a conveyance *to the son*, an American citizen, which put it beyond the reach of the ineligible alien, is evidence from which an inference can be drawn that there was, *not* a transfer to the son—that the transaction was merely colorable. That "evidence" will exist in every case: Fred Oyama can *never* receive land purchased for him by his parents, because the very act by which they attempt not to violate the statute is evidence that they in fact do violate it.

If the court means no more than that the transfer to Fred Oyama indicates an awareness by his father that the laws of California made it impossible for the father to take the land himself, we will agree, but we will deny that any inference unfavorable to Fred Oyama can be drawn from that fact. Again we may refer to *Estate of Yano, supra* (206 Pac. at p. 998):

"The act of petitioner, in securing conveyance of land to his daughter, while confessedly carried out because the laws of California did not permit him to buy it for himself, was in no sense unlawful, since the daughter is a citizen of the United States and entitled to acquire and own real estate. There is nothing in the evidence to indicate that it was not the purpose of this conveyance to vest absolute title to the land in the minor."

With due respect to the court below, the same comment may equally well be made here.

2. The next item of evidence from which the inference is drawn is (R. 117):

"... the father's failure to file the reports required of a guardian."

Fred Oyama, in other words, may lose his gift because of what *someone else* does later. If Fred Johnson's father as his guardian failed to file reports, nothing would happen to anyone but Fred Johnson's father; he would be subject to the discipline of the court for failure to file, just as is Fred Oyama's father. Fred Oyama is in the position of meeting this charge that his guardian failed to file reports only because the property given to him was of a character that his father could not own. He is subject to an additional burden, that of, presumably, acting as a guarantor of his guardian's conduct, simply because he is "the minor child of such [ineligible] alien." Fred Johnson need not worry; Mr. Johnson can be as illegal and as careless as he pleases, and it creates no inference that he is *recanting* in

his gift of the property to his son.¹ Mr. Oyama's conduct, in California, can be used, ten years later, to bolster the effort of the State to deprive Fred Oyama of his property in its entirety.

Moreover, another comment is warranted with respect to the reports. The first reports to which the court below refers (R. 111) are those required by Section 4 of the Alien Land Law, *infra*. But that section, as amended in 1920, prohibited Fred Oyama's father from being his guardian at all; ineligible aliens were denied that privilege. That disqualification was declared unconstitutional by the California courts in *Estate of Yano, supra*, in 1922. But those same 1920 amendments, by Section 5, *infra*, required *only* persons *other than an ineligible alien parent*, who might under the 1920 Act be appointed, to file reports annually. Not until it was further amended in 1943 did the law provide for a system of annual reports by an ineligible alien-guardian by a revision of Section 4: Cal. Stats. 1943, p. 2999.

The brief by the State in opposition to certiorari² appears to agree that, under those circumstances, Section 4 may not have required reports of Fred Oyama's guardian until 1943 (p. 10), and it certainly may well be true that he did not understand until 1943 that he was required to file any reports under a section of a statute which expressly prohibited him from its operation. The fact that the court, although he was known to be the guardian and had twice appeared in guardianship proceedings before the court in connection with mortgages (R. 108), did not, so far as appears, take any action to compel the reports, lends credence to this. Moreover, it also tends to cast doubt on whether Section 5 was then thought to require reports from an ineligible alien parent acting as guardian. Although the Brief in Opposition for the State now says Section 5 also required reports from Fred Oyama's father (p. 10), a fair reading of that section would rather suggest that the Sec-

² Cited hereafter as Brief in Opposition.

tion 5 reports were to be filed by a non-parent guardian. The failure both of the court and of the District Attorney to take action under Section 5 may well indicate that no one has heretofore believed Section 5 to be applicable.

When, in 1943, the State finally removed from its statute-books a law which had been declared unconstitutional over 20 years before, and again required Section 4 reports by parent guardians, Fred Oyama's guardian was detained in a relocation camp, physically removed from California and from the supervision of his son's land. He remained there during the entire time from 1943 until this action was filed on August 28, 1944. Moreover, the record shows that from the time of the father's removal from California until February 10, 1944, he received no proceeds from the property (R. 81, 84, 85; P. Exhs. 3, 4).³

3. The third item of evidence relied on by the court below is (R. 117):

" * * * the unexplained failure of the father, or any one of the defendants, to offer himself as a witness,
* * * "

³ The State's Brief in Opposition also refers to other reports required by Section 1553 of the California Probate Code (p. 10). The opinion of the court below (R. 108) makes it clear that the reports as to which evidence was introduced were only those required by the Alien Land Law; and it is likewise wholly clear that it is only the absence of these reports which was referred to by the court in its summary of the supporting evidence (R. 111-112).

At the trial of the action, about a year after it had been filed, the State requested counsel for defendant to produce the father so that it might call him as a witness (R. 97). No attempt had been made to subpoena him, nor to take his deposition, though he had been for most of the time in a detention camp and easily available to the State. The matter closed with this colloquy (R. 99):

"Mr. Wirin: I have no objection to stating where he is, but in the absence of process I don't feel that I am under obligation to produce him. I hope this discussion will not hurt his case."

"The Court: No."

Again, Fred Oyama stands to lose his gift because of something that someone else has done. Again he is made the guarantor of his father's conduct. The father never claimed that he had any interest in the property. We see no basis for an obligation on his part to "offer himself as a witness." In addition, it certainly must be admitted by the State that it is drawing a long bow when it attempts by conduct of others in 1945 to destroy the validity of the deeds and other evidences of title that Fred Oyama received over ten years before.

4. The fourth, and final, item of "evidence" relied upon by the court below is (R. 117-118):

"* * * the presumption created by Section 9 of the Alien Land Law."

That section provides:

"A prima facie presumption that the conveyance is made with such intent [to prevent, evade or avoid escheat] shall arise upon proof of any of the following groups of facts:

"(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof;"

Several comments on this presumption are appropriate. The first concerns its substance. Section 9—the escheat section—provides that escheat shall take place "if the conveyance is made with intent to *prevent, evade or avoid escheat*" (italics supplied). The presumption operates on the matter of proof of that intent.

But, at least in normal usage, there is no taint of impropriety, much less of illegality, in either an intent to "prevent" escheat or an intent to "avoid" it. Each of those indicates action which has the highest respect for the law, and full desire to obey it. We say it advisedly: under this presumption Fred Oyama could *never* receive a

gift of land from his father. Every item of evidence which he might adduce to prove that his father had taken the most meticulous and elaborate efforts to give him the land would be strengthening the State's case. Upon what evidence, we may ask, can Fred Oyama ever prove that his father did not intend to "prevent" escheat? When it is "presumed" by the payment of the consideration for the land by Fred's father that he intended to "prevent" escheat, and when an intent to "prevent" escheat is enough to cause escheat, Section 9 is no more than a trap—a substantive rule, in the guise of a presumption, that every gift of land by a Japanese alien father to his minor children fails, and the property passes to the State. Certainly, as a substantive rule that a Japanese alien cannot make a *bona-fide* gift of land, Section 9 is unconstitutional. *Heiner v. Donnan*, 285 U. S. 312.

The second comment on the presumption is the overwhelming evidentiary effect given to it. This presumption does not decide merely who has the burden of going forward. This presumption is "evidence". It was so regarded by the court below (R. 117-118), and indeed regarded as evidence from which inferences could be, and were, drawn (*ibid.*). The State's Brief in Opposition purports to announce the California rule to be (p. 8):

"that the trial court may properly conclude that a presumption outweighs in evidentiary value the testimony of many witnesses."

That was certainly the effect accorded it in this case.⁵

~~Even were it possible, therefore, for there to be evidence which would rebut the presumption, it is apparent that Fred Oyama would face an overwhelming task. The presumption retained its full vigor, and rebutted, all the evi-~~

⁵ It is difficult to see why with this presumption already in effect the legislature of California in 1945 added the further provision that in addition to the presumption, the burden of proof was on the defendants in each case in which the presumption applied. Cal. Stats. 1945, c. 1129, p. 2168; see Appendix A, *infra*.

dence here. Without repeating the statement, *supra*, there were in evidence the deeds to Fred Oyama, officially recorded (R. 3, 6, 60), which, in the usual case, are conclusive. *Hamilton v. Hubbard*, 134 Cal. 603, 605, 65 Pac. 321-322. There was the evidence of the proceedings in the state courts of California in which Fred's father, having sworn that at least one of the parcels of land belonged to Fred (P. Exh. 1), was appointed his guardian (R. 59), and in that capacity twice received authority from the California courts to borrow money on the lands in question (R. 108). There was the testimony of John Kurfurst, one of the defendants called as a witness by the State, who had long known the Oyamas and had "managed" the property when they were evacuated, that he understood that the land in question belonged to Fred Oyama, that receipts for income from the land were signed by Fred Oyama, that Fred's father had told him that it was Fred's land and that he knew the father was running the boy's business (R. 80-97).

Despite this evidence, the trial judge stated (R. 103):

"I think that there is only one way I could determine this matter under this evidence and that would be simply to hold, that the plaintiff has, by the application of the inference, the statutory inference, the presumption, and by the evidence that has been produced here, has maintained the preponderance of the evidence and that judgment be for the plaintiff."

And, from other elements in his opinion, he was quite clearly thinking of the intent to "prevent" rather than to evade, so that in fact all the evidence which would normally operate in Fred's favor was considered evidence against him. The evidence of the deed and record title and the guardianship the trial court found to be facts *against* Fred Oyama, because they were, in his mind, designed to prevent escheat (R. 102).

Again, as in our first comment on the presumption of Section 9, we come out with the conclusion that it is really

a rule of law, not a presumption at all. The effect is to have legislative fiat "take the place of fact in the judicial determination of issues involving life, liberty or property." *Western & Atlantic R. R. v. Henderson*, 279 U. S. 639, 643. Whether we look at its ~~normal~~ content, or at its operation, it amounts to no more than a statement that, in California, Fred Oyama cannot ever receive a gift of agricultural land from his parents.

The final comment on this presumption is perhaps, after all, the most obvious—that Fred Oyama must face a burden which Fred Johnson need not face, and he must face this burden solely because of his race—solely because his parents are Japanese. This is true whether the presumption is conclusive or is really rebuttable; whether it is equal to the evidence of many witnesses or one witness, or whether or not one considers any of the other points discussed above.

A gift by a parent to a child is a normal, usual and expectable occurrence. In the case of an American citizen child whose parents are British aliens, no burden is cast upon the citizen to prove his gift. But, in the case of a child who, though also an American citizen, has parents who are Japanese aliens, the gift may be defeated unless the child can come forward and adduce proof as to the intent of his parents. Patently, the presumption operates unequally on different classes of citizens, and the classification is one based solely on racial origin. It cannot stand, as such, under the Constitution.

Nothing in *Cockrill v. California*, 268 U. S. 258, in which the validity of this presumption was sustained in a criminal case, is inconsistent with this view, since the point here at issue was not there involved. Here we have a gift made by a father to his son—a natural and expectable occurrence—not to a stranger, as in the *Cockrill* case. Whatever justification there may be for applying a presumption such as this to a gift to a stranger, certainly the policy considerations do not apply with equal force here. Fred Oyama has

a right to expect gifts made to him to be treated at their face value, just as Fred Johnson does.

Moreover, it may be questioned that the decision in the *Cockrill* case is sound. The later decision in *Morrison v. California*, 291 U. S. 82, which held unconstitutional another of the presumptions of the California Alien Land Law, evidences an approach to the problem which would deny validity to this presumption, as well. There, the court weighed the balance of convenience in proof, and concluded that none could be served. What was said there could equally well be said here (291 U. S. at pp. 92-93):

"Now, plainly as to Morrison, an imputation of knowledge is a wholly arbitrary presumption. • • •

Nothing in the People's evidence gives support to the inference that Morrison had knowledge of the disqualifications of his tenant, or could testify about them. What was known to him, so far as the evidence discloses, was known also to the People, and provable with equal ease."

Fred Oyama was six years old when he was given the first parcel of land, and nine years old when he was given the second parcel. Can the State seriously urge, here, that he is in a better position than the State to adduce evidence, in 1945, on the nature of his parents' intentions some ten years before? Just as in the *Morrison* case (see 291 U. S. at p. 96), if he doesn't know what his parents' intentions were, he loses his gift of the land. Mr. Justice Cardozo saw the result of such a presumption in the *Morrison* case, and struck it down (*ibid.*):

"There can be no escape from hardships and injustice, outweighing many times any procedural convenience, unless the burden of persuasion • • • is cast upon the People."

There, it was racial origin that was in issue; here, it is intent. In neither case can there be any showing that the State should not establish its case on the merits, rather than rest upon a presumption which may in fact be insuperable.

In sum, we submit that the Alien Land Law, as here applied, denies to Fred Oyama, a citizen of the United States, the protection of the laws equal to that which is applied to Fred Johnson and of the privileges and immunities possessed by Fred Johnson. Each receives a deed to a parcel of land paid for by his father as a gift to him while still a minor. Fred Johnson has his land; he need not worry thereafter, for the State of California will not only not try to deprive him of it but will in fact use its machinery of justice to make sure that it and its income is held for him properly and safely. Fred Oyama, quite the contrary. He must defend it against a claim that he never got it. He must face the realities of life: that the State can use as evidence *against* him the fact that his father did not keep title in himself and that his father may be remiss in his conduct thereafter, even many years thereafter, by failing to carry out his statutory duties as guardian, or by failing to come in and offer himself as a witness in an escheat proceeding. And, if he is really realistic, he will recognize that he is presumed to be not the owner anyway, and must meet a formidable, if not impossible, burden of proof—a burden which continues to exist as evidence against him all the way to the Supreme Court of his state. Is this, in truth, the "protection of equal laws"?

It may be said that Fred Oyama is no worse off than Fred Johnson, because Fred Johnson would be in the same position as Fred Oyama if Mr. Oyama had given his property to Fred Johnson. That we agree, is true, but it is wholly unrealistic. One cannot ignore the parent-child relationship. California, by its statutes, has recognized that relationship, just as has every other state. California Civil Code, Secs. 196, 206; California Penal Code, Sec. 270-e; California Welfare and Institutions Code, Sec. 2576.* Fred Oyama, as an

* Section 196 of the Civil Code, for example, provides: "The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability."

American citizen, has every right to expect that the normal, usual, human relations will be permitted to him, as well as to anyone else. Not so, under this law. His father, under the decision below, cannot make gifts to him of land like this. The expectancy of parental assistance is, *pro tanto*, denied him. Maybe it is true that Fred Johnson cannot acquire gifts from Mr. Oyama, and that no one else can acquire such gifts, without being subject to the same disability. But those persons have not suffered thereby; they have no reason to expect such gifts. Fred Oyama does. He is denied one of the privileges inhering in every other citizen except those whose parents happen to be Japanese—the privilege of the unlimited bounty of parents eager, as are all parents, to advance his welfare as best they can. A law which thus discriminates against him cannot meet the tests which our Constitution guarantees.

II.

THE ALIEN LAND LAW IS ALSO UNCONSTITUTIONAL ON ITS FACE AS IN CONFLICT WITH THE FOURTEENTH AMENDMENT.

We need not rest, in this case, solely upon the ground heretofore urged in Point I—that the Alien Land Law, as here applied to Fred Oyama, a citizen, is unconstitutional. In addition, it is also our position that the law on its face fails to meet the test of the Fourteenth Amendment. Both as to Fred Oyama and as to Kajiro Oyama, and as to either of them—whichever of them may be said to have acquired title to the tracts of land here in question—the Alien Land Law, which purports to escheat those tracts to the State, must be declared to be unconstitutional. The decision below must also be reversed on this ground.

A. The Alien Land Law is Race Legislation Aimed Directly at the Japanese.

The Alien Land Law of California, the prototype of the "ineligible alien" laws which now are found in several

other states,⁷ has had a long history. Its origin must be sought even prior to 1913, when the law was first enacted. Both in its genesis, and in its subsequent history, it bears the unmistakable stamp of purely racist,—anti-Japanese—legislation. Almost all of its history can be summed up in the frank statement of the Supreme Court of California in 1923 in *Estate of Yano*, 188 Cal. 645, 658, 206 Pac. 995, 1001, that the object of the law is "to discourage the coming of Japanese into the State". The only addition necessary would be that it was also intended "to discourage the stay of those who had already come."⁸

⁷ In the order in which the statutes were enacted, the other states are: Arizona (1917), see Ariz. Code (1939) §§ 71.201-71.206; Louisiana (1921) Const., art. XIX, § 21; New Mexico (1922) Const., art. II, § 22; Idaho (1923), see Idaho Code (1932) §§ 23.101-23.112; Montana (1923), see Mont. Rev. Code (1935) §§ 6802.1-6802.8; Oregon (1923), see Ore. Comp. Laws (1940) §§ 61.101-61.111; Kansas (1925), see Kan. Gen. Stat. (1935) §§ 67.701-67.711; Utah (1943), see Utah Code Ann. § 78-6a (Supp. 1945) (this law was, however, repealed in 1947); Wyoming (1943), see Wyo. Comp. Stat. (1945) §§ 60.401-60.407 (this despite a provision of the Wyoming constitution which provides (Art. I, §29): "No discrimination shall ever be made by law between resident aliens and citizens as to possession, taxation, enjoyment and descent of property." The law may, of course, be held effective against non-resident ineligible aliens); Arkansas (1943) Acts 1943, p. 75 ("No Japanese or a descendant of a Japanese shall ever purchase or hold title to any lands in the State of Arkansas.")

⁸ The fact that the California law has a racist, anti-Japanese origin and history has been pointed out many times by many scholars who have studied the evidence. In fact, we are aware of no study which has reached a contrary conclusion. Among the most significant of such studies are Millis, *The Japanese Problem in the United States* (1915); Buell, *The Development of Anti-Japanese Agitation in the United States*, I, 37 Political Science Quarterly 605 (1922), II, 38 *id.* 57 (1923); Ichihashi, *Japanese in the United States* (1932); Bailey, *California, Japan, and the Alien Land Legislation of 1913*, 1 Pac. Hist. Rev. 36 (1932); H. Rep. No. 2124, 77th Cong., 2d Sess. (1942); McWilliams, *Prejudice* (1944).

Within the past year, inspired by the renewed enforcement campaign of what had been considered for a decade as a dead letter

1. THE LAW HAS AN ANTI-JAPANESE ORIGIN.

The influx of Japanese to the West Coast states began with the legalization of Japanese labor emigration by the Emperor in 1890, although the numbers were not large in any one year until 1900.⁹ Discriminatory measures against the Japanese were proposed beginning in the 1890's, but they received serious consideration only after 1900.¹⁰ The first resolution of the California Legislature urging Congress to protect American labor by restricting Japanese immigration is dated 1901.¹¹ In July, 1908, negotiations with the Japanese Government resulted in the "gentlemen's agreement" that Japan would limit passports to the United States to non-laborers, laborers domiciled in the United States, "settled agriculturalists" and families of persons already here.¹² That agreement, together with strong

statute, two distinguished authors have again thoroughly explored the question and reached the same conclusion: Professor Dudley O. McGovney, in *The Anti-Japanese Land Laws of California and Ten Other States* (1947), 35 Calif. L. Rev. 7; and Edwin E. Ferguson in *The California Alien Land Law and the Fourteenth Amendment*, 35 Calif. L. Rev. 61 (1947). A recent Comment in the Yale Law Journal, *Alien Land Laws: A Reappraisal*, 56 Yale L. Jour. 1017 (1947), concurs. Counsel acknowledge their obligation to the authors of these studies for references to sources for much of the material in the sections immediately following in this brief.

⁹ In that year, 12,628 Japanese entered the United States. *Report of the Commissioner of Immigration for 1900*, p. 10. "Hardly had the Japanese begun to arrive at our ports when hostility against them was registered by groups in the Pacific states. Men in public life quickly realized that the Japanese, as successors to the prejudices which the Chinese had aroused, would make excellent political capital." H. Rep. No. 2124, 77th Cong., 2d Sess. (1942) p. 72. See also Ferguson, *supra*, note 8, pp. 62-63, on the transfer of hostility from the Chinese to the Japanese.

¹⁰ *Ibid.* The development of anti-Japanese sentiment from 1900 to 1913 is sketched in Ferguson, *supra*, note 8, pp. 64-65.

¹¹ Ichihashi, *Japanese in the United States* (1932) p. 231.

¹² Report of the Commissioner of Immigration for 1908, pp. 125, 213.

Presidential intervention, prevented the passage of the alien land laws proposed and strenuously urged in the California legislature in 1909 and 1911.¹³ At the next session in 1913, however, notwithstanding the intervention of the Secretary of State, the Alien Land Law was passed.¹⁴ Cal. Stats. 1913, p. 206.

The racial basis for the legislation has never been more frankly stated than by the Attorney General of California, and one of the authors of the 1913 law, Ulysses S. Webb:

"The fundamental basis of all legislation upon this subject, State and Federal, has been, and is, race undesirability. It is unimportant and foreign to the question under discussion whether a particular race is inferior. The simple and single question is, is the race desirable. . . . It [the law] seeks to limit their presence by curtailing their privileges which they may enjoy here; for they will not come in large numbers and long abide with us if they may not acquire land. And it seeks to limit the numbers who will come by limiting the opportunities for their activity here when they arrive."¹⁵

Somewhat later in his brief in support of the law in the 1923 cases in this Court (*infra*, pp. 40-52), Mr. Webb revealed one of the bases for determination of race "desirability": the law "was intended to free the American farmer from the competition, upon American soil, of the Oriental farmer" (brief in *Webb v. O'Brien*, p. 148); "If the Oriental farmer is the more efficient, from the standpoint of soil production, there is just that much greater certainty of an economic conflict which it is the duty of statesmen to

¹³ Bailey, *Theodore Roosevelt and the Japanese-American Crises* (1934), c. 13.

¹⁴ See H. Rep. No. 2124, *supra*, note 8, pp. 75-78; Comment, 56 Yale L. Jour. 1017, 1020.

¹⁵ From a speech before the Commonwealth Club of San Francisco on August 9, 1913, quoted in *People in Motion* (U. S. Dept. of Interior, 1947) p. 37.

avoid" (brief in *Porterfield v. Webb*, p. 148); "It was the purpose of the people in a practical way to prevent ruinous competition by the Oriental farmer against the American farmer." (brief in *Frick v. Webb*, p. 486).¹⁶

In the years immediately following 1913, the anti-Japanese sentiment subsided somewhat, particularly because the demand for farm labor during the war required the services of the Japanese as farmers and tenants. However, despite the "gentlemen's agreement", immigration continued at a fairly high pace—the net gain from 1913 to 1920 being about 19,000. The end of the war brought the resumption of hostility.¹⁷ In 1919, the California State Board of Control issued a report on the leasing of land in California to aliens ineligible for citizenship. *California and the Oriental* (1919). The report made passing references to Hindus, who were negligible in number, and to the Chinese, who were found to be not a menace because generally engaged in small commercial enterprises. Almost all of the report dealt with the "menace" from the Japanese, and the report was forwarded to the Secretary of State by the Governor with a letter urging control of Japanese immigration: *Id.*, pp. 11-12. Governor Stephens, in his letter to the Secretary of State transmitting the report, was frank in his statement of what was no more than obvious—that the Alien Land Law of 1913 was aimed solely at the Japanese. He stated (p. 11):

"In 1913 the legislature of this state passed a statute forbidding the ownership of agricultural lands by Jap-

¹⁶ One should add the observation of Thomas A. Bailey (in *California, Japan, and the Alien Land Legislation of 1913*, 1 Pac. Hist. Rev. 36, 57 (1932)): "The people of that state [California] did not object particularly to Chinese and Negroes, who were racially different, but who stayed in their place. But they did object to the Japanese because they were efficient, thrifty, ambitious, and, above all, unwilling to remain 'mudsillers'."

¹⁷ Ferguson, *supra*, note 8, pp. 68-69. H. Rep. No. 2124, *supra*, note 8, pp. 81-82.

anese and limiting their tenure to three year leaseholds. It was the hope at that time that this statute might put a stop to the encroachments of the Japanese agriculturalist. This legislation followed some years after a proposed bill by the Legislature providing for separate schools for Japanese students." (Italics ours.)

The following year, after a violent campaign against the "yellow peril", and with liberal use of the "once a Jap always a Jap" non-assimilability argument, the initiative amendments of 1920 were passed.¹⁸ See H. Rep. No. 2124, *supra*, p. 86; *Hearings on Japanese Immigration before House Committee on Immigration and Naturalization*, 66th Cong., 2d Sess. (1920) pt. 1, at pp. 220, 346. These amendments generally made the law more rigorous, particularly in deleting the provision authorizing leases of agricultural land for not more than three years. Cal. Stats. 1921, p. lxxxiii. Subsequent amendments—the last ones in 1945—have been added from time to time making the law more drastic and more sweeping, adding criminal penalties for its violation, and the like. In 1946, however, the people of California voted decisively against approval of the amendments to the Alien Land Law enacted by the legislature since 1920 (Proposition No. 15). See *People in Motion*, *supra*, note 15, p. 45; Ferguson, *supra*, note 8, p. 73; *Pacific Citizen*, November 9, 1946, p.1.

¹⁸ The "Argument in Favor of Proposed Alien Land Law" drafted by the proponents of the legislation and officially mailed together with arguments against the proposed law, to every voter pursuant to Cal. Elections Code, Secs. 1500-1516, devoted itself to arguments against the Japanese. Apart from one or two references such as "Orientals, largely Japanese", or "Orientals, more particularly Japanese", the entire argument is directed to the Japanese "menace". McGovney, *supra*, note 8, p. 14. Governor Stephens stated, at the time, that "In my opinion, the present agitation [against the Japanese] in California was inspired by candidacy for office. * * * The dominant factors in the movement are actuated by their desires for political preferment." H. Rep. No. 2124, *supra*, note 8, p. 82.

2. THE LAW HAS HAD A CONSISTENT ANTI-JAPANESE HISTORY OF ENFORCEMENT.

The anti-Japanese, racist, basis for the law is demonstrated not only by its origins, but by the character of the escheat proceedings which have been brought by the State under it. One perhaps need say no more than that in the 34 years from 1912 to 1946, of 76 escheat proceedings, 1 involved a Hindu, 2 involved Chinese, and every one of the remaining 73 involved Japanese. This information, from the official Reports of the Attorney General of California, bears witness to the real purpose of the statute—to the truth of the statements of Governor Stephens and the California Supreme Court already quoted.¹⁹

Even more striking, perhaps, are the more recent figures revealed by the Attorney General's Reports: Every one of the 59 escheat cases filed by the State since Pearl Harbor was filed against a Japanese. The hysteria generated in order to foster the Japanese evacuation program, and in turn accentuated by it, found one of its expressions in the first enforcement for over a decade of the traditional anti-Japanese statute. The campaign was aided by a report of a California Senate Committee—Senate Fact Finding Committee on Japanese Resettlement—which not only opposed the return of any Japanese—citizens or aliens—to California until after the war, but also recommended an appropriation of \$200,000 for more vigorous enforcement of the Alien Land Law (Report of May 1, 1945, pp. 3-5, 8). The appropriation was made (Cal. Stats. 1945, p. 2739), together with amendments which attempted to prevent the operation of the statute of limitations on the previous device of inactivity (*ibid.* p. 2177). That device we deal with in Point III, *infra*. In any event, the years since Pearl Harbor have shown the law in its true colors.

The reported cases involving the law show the same picture. Every one of the escheat cases, and almost all of the

¹⁹ A chart showing the detailed summary of the information from the Reports is set out in Appendix B, *infra*.

non-escheat cases, involve Japanese. A complete table of all reported cases through August, 1947 is set out in Appendix C, *infra*.

Even the excuses for non-enforcement during the 1930's reveal the racist, anti-Japanese nature of the law. The Attorney General of California stated in 1944 that the reason for non-enforcement of the law during the decade prior to Pearl Harbor was "a reflection of the National policy to refrain from acts which might be regarded as unfriendly to the Japanese race and the Japanese empire."²⁰ The same reason was given by the California Senate Committee. It stated (p. 3):

"The Federal authorities since the beginning have not looked with favor upon the enforcement of the law just as they opposed its enactment in the beginning. The principal reason for this attitude seems to have been that expressed by William Jennings Bryan when, as Secretary of State, he came to California in opposition to the enactment of the law. He stated that the enactment of the law might turn a now friendly Nation into an unfriendly Nation. Undoubtedly, the attitude of the Federal authorities on this matter has been an important influence."

In summary, when the law is enforced, it is enforced against the Japanese. When it is not enforced, it is due to the desire not to offend Japan. How can it rationally be said that the law is not a racial law, directed at the Japanese race?

One other matter should be disposed of here. There is a suggestion in the State's Brief in Opposition (p. 13) that the phrase "ineligible to citizenship" in the Alien Land Law implies more than racial ineligibility. There are, of course, other than racial ineligibilities: "deserters" (U. S. C., Title 8, Sec. 706); "subversives" (*id.*, Sec. 705); persons who cannot speak the English language (*id.*,

²⁰ Proceedings, California Land Title Association. (38th Ann. Conf. 1944) p. 97.

Sec. 704); and persons who do not have good moral character, are not attached to the principles of the Constitution, and the like (*id.*, Sec. 707(a)). Yet it will not be disputed—Indeed it was conceded in the court below—that none of these categories of ineligibles have ever been barred from land ownership. There is no record of any proceeding of any sort in California under the law where the person proceeded against was ineligible for any reason other than his race.²¹ We fully agree with the State's Brief in Opposition (p. 12) that "Race prejudice and race hatreds, as such, are ugly things." We cannot, however, on this law, with its racist, anti-Japanese origin, and its racist, anti-Japanese enforcement, agree with the State's further comment (*ibid.*): "We have neither the desire nor do we believe we are under any necessity to excuse or defend these things." That is precisely what this statute is; that is precisely what the State must defend, whether it desires to do so or not.

Finally, we should add that, whatever may have been the effect of the phrase "aliens ineligible to citizenship" in 1913 or 1920, the successive narrowing of this group by Congress through amendment of the Naturalization Laws has left this restriction applicable, in practice, to but one racial group in California—the Japanese. Formerly, the right to become a naturalized citizen was denied, with minor exceptions, to all but white persons and persons of African nativity or descent. R. S. § 2169; Act of February 18, 1875, c. 80, 18 Stat. 318; Act of May 9, 1918, c. 69, § 2, 40 Stat. 547. Descendants of all races indigenous to the Western Hemisphere were removed from the restriction by the Act of October 14, 1940, c. 876, § 303, 54 Stat. 1140. More recently, the ban was removed from the Chinese (Act of De-

²¹ Indeed, considering the Alien Land Law as a whole, it may well be doubted whether an escheat proceeding could be successfully maintained under it against a Frenchman, let us say, who had been denied citizenship on the ground of his inability to speak adequate English.

ember 17, 1943, c. 344, § 3, 57 Stat. 601) and the Filipinos and peoples indigenous to India (Act of July 2, 1946, c. 534, § 1, 60 Stat. 416; U. S. Code Cong. Service (1946) p. 401). Figures are not available for California alone, on the number of aliens racially ineligible to naturalization under the present law. In 1940, however, of those residing in the continental United States, over 98 percent were Japanese.²² Even were one to blind himself to the realities in the earlier years, there can now be no escape from the conclusion that this is, for all practical purposes, an anti-Japanese statute.

B. The Alien Land Law, As An Anti-Japanese Law, is in Violation of the Fourteenth Amendment.

Pollock and Maitland tell us that "in the course of the thirteenth century our kings acquired a habit of seizing the lands of Normans and other Frenchmen" because the Normans were traitors and the Frenchmen were enemies. This conduct was later "generalized" into a right to seize any land owned by an alien. "Such an exaggerated generalization of a royal right will not seem strange to those who have studied the growth of the king's prerogatives." *A History of English Law* (2d ed.) 463. Lord Coke later sought a rationalization for the rule that an alien could not hold land in England: that in time of war they would discover the secrets of the realm, would sap its revenues, and tend to its destruction, and that in times of peace, so much of the land might be owned by aliens that there would be too few freeholders for jury duty and a failure of justice would follow. *Calvin's Case*, 77 Eng. Rep. 377, 399 (1609). Most of those who have examined these early rules, in Eng-

²² The detailed figures, from 1940 Census, "Characteristics of the Non-White Population", p. 2, are as follows:

Japanese	47,305
Korean	749
Polynesian	9
Other Asian	95
Total	48,158

land and in other countries, surmised that they were related to the feudal system, when it was felt that military service could be exacted only of subjects owing allegiance. See Blackstone, *Commentaries*, Vol. II, p. 250; Wheaton, *International Law* (4th Eng. ed.) 134; *State v. Boston, Concord & Montreal R.R.*, 25 Vt. 433, 438 (1853).

Whatever its feudal *raison d'être* may have been, it is fairly clear now that its survival is no more than anachronistic remnant of the Middle Ages. France abolished all restrictions in 1819; the Parliament in England followed in 1870. In the United States only seven states retain legal restrictions which approximate the common law system, and in 16 states—including New York, with almost one quarter of all of the aliens in the United States—there are no restrictions whatever.²³

We are not required in this case to determine whether there is any legitimate basis for discrimination by the State against all aliens, as a class, with respect to the right to hold land. Prior to *Terrace v. Thompson*, 263 U. S. 197, the Court had intimated, though never squarely held, that the power of the States to prohibit alien land ownership was not foreclosed by the Fourteenth Amendment. Cf. *Phillips v. Moore*, 100 U. S. 208; *Hauenstein v. Lynham*, 100 U. S. 483; *Blythe v. Hinckley*, 180 U. S. 333; *Toop v. Ulysses Land Co.*, 237 U. S. 580, 582; Freund, *Police Power* (1904) See s. 134, 706. That conclusion might well now be challenged, with the alleged considerations of national defense now fully the responsibility of the Federal Government,²⁴ and with no other apparent rational basis for a discrimination in rights to own land between aliens (at least resident aliens) and citizens.

²³ McGovney, *supra*, note 8, pp. 20-24.

²⁴ Recognition of this fact led both New York and New Jersey, in 1944 and 1943 respectively, to remove restrictions on enemy aliens, since state legislation as a security measure was unnecessary. N. Y. Laws, 1944, p. 627; N. J. Laws, 1943, p. 395. See Ferguson, *supra*, note 8, pp. 86-87; McGovney, *supra*, note 8, pp. 39-41.

But what we challenge here is not a statute which puts aliens in one class and citizens in another. What we challenge here has no counterpart in the feudal system, or in the common law; nor has it a rationalization in Lord Coke or Blackstone. What we challenge here is a discrimination which singles out one small group of aliens—the Japanese—and forbids them to own land. Not only does the law limit its effect to the small class, but it accentuates its severity in proportion as it narrows its field. As the Supreme Court of California stated in this case (R. 111):

“the scope of the statute is much broader than the acquisition and ownership of land; it includes the right to acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property.”

Sections 1 and 2 of the Alien Land Law (*infra*) limit Japanese aliens to interest in real property in California to the extent prescribed by the 1911 treaty between Japan and the United States (37 Stat. 1504). This treaty has a specific grant of a right to own or lease houses, warehouses or shops, and to lease land for residential and commercial purposes, but contains no provision relating to agricultural lands. In consequence, in California, a Japanese alien may safely approach agricultural land only in the capacity of a day laborer.²⁵

That classification—that discrimination—we believe to be a denial of the equal protection clause of the Fourteenth

²⁵ Indeed, it is not wholly clear now whether the denunciation and consequent end of the United States-Japanese treaty of 1911 in 1939 (Dept. of State Bull. (July 29, 1939) Vol. I, p. 81) has had the effect of denying to Japanese aliens in California rights to have any interest in *any* land. The Attorney General of California has intimated that the ban is now complete (Proceedings, California Land Title Assoc. 38th Annual Conference 1944, pp. 91-101), although a recent lower court decision to that effect has been reversed in the California intermediate courts. *Palermo v. Stockton Theatres*, 76 Adv. Cal. App. 26, 172 P. (2d) 103 (1946), hearing granted by Supreme Court of California, October 31, 1946, *Id.*

Amendment. That clause is, of course, not a prohibition on legislative classification. Within limits, classifications are the proper province of the legislatures of the States; the limits are that any legislative classification must be based upon substantial differences having a reasonable relation to the object dealt with and the public purpose sought to be achieved. *Atchison, T. & S. F. R.R. v. Matthews*, 174 U. S. 96, 104-105; *Southern Ry. v. Greene*, 216 U. S. 400; *Frost v. Corporation Commission*, 278 U. S. 515; *Smith v. Cahoon*, 283 U. S. 553, 566-567; *Old Dearborn Co. v. Seagram Corp.*, 299 U. S. 183.

Here, however, we do not start with the usual presumption in favor of legislative classification. This Court has repeatedly held that in cases involving civil liberties a much more rigorous test will be applied to state action than in cases involving the normal regulation of ordinary commercial transactions. *Thomas v. Collins*, 323 U. S. 516, 527, 529-532; *Schneider v. Irvington*, 308 U. S. 147, 161; *Thornhill v. Alabama*, 310 U. S. 88, 95-96. An intrusion by a state in this domain can be upheld "only if grave and impending public danger requires this". *Thomas v. Collins*, *supra*, at p. 532. In intent, and in effect on the lives of aliens of Japanese origin, its denial to them of a fundamental right normally open to all—to till the soil—is indistinguishable from the other state legislation which has been stricken down by this Court. The specific refusal of the court below to apply this test in evaluating the Alien Land Law (R. 116-117) is not only error, but a tacit admission that the law will not stand such a test.

Indeed the presumption—and it is a strong presumption—is against any "race" legislation. Race is a "neutral fact—constitutionally an irrelevance". *Edwards v. California*, 314 U. S. 160, 185. This Court stated in *Korematsu v. United States*, 323 U. S. 214, 216:

"It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. *** Pressing public necessity may sometimes justify the existence of such restriction; racial antagonism never can."

See also *United States v. Carolene Products Co.*, 304 U. S. 144, 152; *Steele v. Louisville & N. Ry.*, 323 U. S. 192.

This is such a statute. The statute was originally passed to restrict the rights of one racial group. The purpose of the statute has been admitted to be solely anti-Japanese by both the Supreme Court of California and its governor. Its enforcement—indeed, even its non-enforcement—has been solely anti-Japanese. For all practical purposes, only the Japanese are now affected by it.

Under those circumstances, it makes no difference whether the “clear and present danger” rule or the “reasonable classification” rule be applied. The law meets neither test.²⁶ Compare *Buchanan v. Warley*, 245 U. S. 60, in which this Court struck down a city ordinance limiting the rights of Negroes to own land. See also *Harman v. Tyler*, 273 U. S. 668; *Richmond v. Deans*, 281 U. S. 704.

The use of the term “aliens ineligible to citizenship” is merely a veil which this Court will put aside. In 1880, California enacted a statute which prohibited fishing by “aliens incapable of becoming electors of this state” (Cal. Stats. 1880, p. 123). A Federal circuit court had no difficulty in determining its true meaning—unlawful discrimination against the Chinese. In re *Ah Chong*, 2 Fed. 733 (C. C. D. Calif. 1880). It stated (2 Fed. at p. 737):

“It is obvious, * * * considered in connection with the public history of the times, that the act relating to fishing in question was not passed in pursuance of any public policy relating to the fisheries of the state as an end to be attained, but simply as a means of carrying out its policy of excluding the Chinese from the state, contrary to the provisions of the treaty.”

This Court had before it a similar problem in *Yu Cong Eng v. Trinidad*, 271 U. S. 500. A Philippine statute for-

²⁶ Some of the arguments heretofore advanced in favor of the law are more appropriately considered in connection with the analysis of the prior decisions of this Court, and have consequently been taken up in Point III, *infra*.

bad "any person" to keep his business accounts in any language other than English, Spanish or a local dialect. The Court, noting the origins and background of the act, stated (271 U. S. at p. 514):

"Nor is there any doubt that the Act, as a fiscal measure, was chiefly directed against the Chinese merchants. The discussion over its repeal in the Philippine Legislature leaves no doubt on this point. So far as the other merchants in the Islands are concerned, its results would be negligible and would operate without especial burden on other classes of foreign residents."

Moreover, on the history of its enforcement, as well as its background, the case is parallel to *Yick Wo v. Hopkins*, 118 U. S. 356. Again, a San Francisco ordinance did not in terms apply only to a single race, yet under it only Chinese were denied licenses. The Court stated (118 U. S. at p. 374):

"The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution."

See also *Hilly v. Texas*, 316 U. S. 400; *Ho Ah Kow v. Nunan*, 12 Fed. Cas. 252 (C. C. D. Cal. 1879).

The question, in each case, was that stated in *Holden v. Hardy*, 169 U. S. 366, 398: "whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression, or spoliation of a particular class." The answer, here, can not be in doubt. The words of Mr. Justice Field, in invalidating the notorious "queue" ordinance of San Francisco are apposite. Faced with an ordinance which, ostensibly as a health measure, required that "every male person" imprisoned in the county jail

should have his hair clipped, and recognizing that it was aimed only at the Chinese, who would be disgraced by the loss of their queues, he said (*Ho Ah Kow v. Nunan*, 12 Fed. Cas. 252, 255 (C. C. D. Cal. 1879)):

"When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men; and where an ordinance, though general in its terms, only operates upon a special race, sect or class, it being universally understood that it is to be enforced only against that race, sect or class, we may justly conclude that it was the intention of the body adopting it that it should only have such operation, and treat it accordingly."

No one—apparently not even the State of California—would contend that a statute which was in terms directed solely against alien Japanese could stand. *Yick Wo v. Hopkins*, 118 U. S. 356, 374. Cf. *Chy Lung v. Freeman*, 92 U. S. 275; *In re Parrott*, 1 Fed. 481 (C. C. D. Cal. 1880); *In re Quong Woo*, 13 Fed. 229 (C. C. D. Cal. 1882); *In re Tie Loy*, 26 Fed. 611 (C. C. D. Cal. 1886); *In re Lee Sing*, 43 Fed. 359 (C. C. D. Cal. 1890); *In re Ah Fong*, 1 Fed. Cas. 213 (C. C. D. Cal. 1874). This Court itself has said that the Fourteenth Amendment "nullified sophisticated as well as simple-minded modes of discrimination." *Lane v. Wilson*, 307 U. S. 268, 275. Yet it is plain that the "alien ineligible to citizenship" is merely a circumlocution and means no more than that in this law. As recently as 1943 the California Legislature provided a graphic example in enacting a statute discriminating against Japanese aliens by name in connection with fishery licenses. Cal. Stats. 1943, c. 1100. The matter was considered further, and in 1945 the California Senate Committee on Japanese Resettlement reported that there was "danger of the present statute being declared unconstitutional, on the grounds of discrimination, since it is directed against alien Japanese". The Committee therefore recommended that the constitutional question could "probably be eliminated by an amendment which has been

proposed to the bill which would make it apply to *any alien who is ineligible to citizenship*". (Italics supplied.) Report of May 1, 1945, pp. 5, 6. The law was so amended. Cal. Stats. 1945, c. 181.² Could there be any clearer proof of what "alien ineligible to citizenship" means in California?

Moreover, as we have seen above, not only is the statute anti-Japanese in purpose, but it has been anti-Japanese in operation. Apart from all other considerations, that would be enough to seal its doom. Where over a period of 12 years there have been 59 escheat cases filed under the law, and *every one of them* is against a Japanese, the case falls squarely within the doctrine of *Yick Wo v. Hopkins*, 118 U. S. 356, and *Hill v. Texas*, 316 U. S. 400.

The State has attempted (Brief in Opposition, p. 18) to avoid the force of this argument by asserting that the Japanese are the only ones against whom escheat actions are brought because "they constitute the offenders". One would scarcely expect anything else when the law was deliberately aimed at the Japanese. However, the argument moves the State only to the other horn of the dilemma. If they *are* the only "offenders", then in truth the law might as well read "alien Japanese" instead of "aliens ineligible to citizenship", and its unconstitutionality would be no longer open to question.

We do not regard the State's suggestion as an argument in favor of the law; rather, it is a confession of its racist, anti-Japanese, unconstitutional characteristics.

III.

THE PRIOR DECISIONS OF THIS COURT DO NOT CONTROL AND SHOULD EITHER BE OVERRULED OR DECLARED TO BE NO LONGER APPLICABLE.

This Court has never passed upon the issue raised in Point I above—the rights of an American citizen such as Fred Oyama, to receive a gift of land from his Japanese alien parents. That question has never before been presented to this Court.

The issue raised in Point II, however, as to both Fred Oyama and Kajiro Oyama—the fundamental issue as to the constitutionality of the Alien Land Law—is not new in this Court. In fact, both the court below and the State of California seek to justify the discrimination inherent in the law by reference to a series of opinions by Mr. Justice Butler in 1923, in which the constitutionality of the law was sustained. *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313; *Frick v. Webb*, 263 U. S. 326. Each of these cases, which involved various aspects of the California law, was decided in large part on the authority of *Terrace v. Thompson*, 263 U. S. 197. The latter case, which was the only one of the four in which Mr. Justice Butler discussed the constitutional issue at length, involved a different statute of the State of Washington. That statute prohibited the holding of any right to or benefit in land by all aliens except those who in good faith declared their intention to become United States citizens.²⁷ Mr. Justice Butler passed over the contention that the state discriminated arbitrarily against one of the defendants who was of Japanese origin because of his race and emphasized that the adoption by the state of a classification for purposes of land ownership which distinguished between aliens on the basis of eligibility to citizenship was proper.

Since Mr. Justice Butler passed almost without comment the differences between the Washington and California statutes, it is impossible to say precisely what rationale was used to justify the California law in the 1923 cases. In the *Terrace* case, however, the opinion refers, first, to the federal naturalization laws, 263 U. S. at p. 220. It then accepts and quotes the opinion of the District Court that one who could not become a citizen "lacks an interest in, and the power to effectually work for the welfare of, the state", and that thus the "state may rightfully deny him the right

²⁷ Washington has, in other words, essentially the common-law rule, liberalized only to the extent of treating a good faith declarant the same as a citizen. See McGovney, *supra*, note 8, pp. 43-45.

to own and lease real estate within its boundaries" since, otherwise, "it is within the realm of possibility that every foot of land within the state might pass to the ownership or possession of a non-citizen". 263 U. S. at pp. 220-221.²⁸

Whatever may have been the situation in 1923, the plain fact of the matter is that the justification is now wholly unconvincing.

1. Mr. Justice Butler phrased the first attempt at justification as follows (263 U. S. at p. 220):

"The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership as defined in the act."

No one will deny that the federal law furnishes a classification. There is a class of aliens ineligible to citizenship and generally identifiable as such, albeit in this instance the "ineligible alien" language is but a subterfuge for "Japanese alien". But the mere existence of distinguishing characteristics—whether they be of the Japanese class within the class or of the purported broader class of "ineligible aliens"—does not of itself support a discrimination as respects the right to own agricultural land. People below the age of 21 are a definite class, so are women, so are blind people. Each of these classes, and innumerable other groups, have been set apart in a classification by themselves in some federal statute. The issue is not as to the *existence* of the class; it is solely as to whether, under the circumstances, the class presents a "clear and present danger", or even a reasonable relation to the object sought to be achieved.

²⁸ Mr. Justice Butler did not quote the remainder of the paragraph in the opinion of the District Court (274 Fed. at p. 850): "Such a result would leave the foundation of the state but a pale shadow, and the structure erected thereon but a tower of Babel, from which the tenants in possession might, when the shock of war came, bow themselves out, because they were not bound as citizens to defend the house in which they lodged."

No one, certainly, would say that *any* classification which Congress might adopt for *any* purpose could be used as the measure of the right to own agricultural land in California. Each classification must stand on its own merits. There is no basis whatever, so far as we can see, for a conclusion that the authority of a state to discriminate in the ownership of land within its borders is identical with the specific authority vested in Congress over naturalization under Article I, Section 8. Mr. Justice Butler himself destroyed the basis for his own argument by his statement in the opinion in *Terrace v. Thompson*: "Congress is not trammeled, and it may grant or withhold the privilege of naturalization upon any grounds or without any reason, as it sees fit." 263 U. S. at p. 220. The public policy of Congress on a purely political issue as to which its power is plenary furnishes no rational basis on which to sustain a classification denying a group the right to own land. And certainly it cannot be used, as it is here, as a cloak for specific discrimination against the Japanese alone.²⁹

2. We find no better justification, however, when we turn to Mr. Justice Butler's second suggestion. It seems to be in two parts: first, that "one who is not a citizen and cannot become one lacks all interest in, and the power to effectively work for the welfare of, the state". A little later in the opinion, he states the same position in somewhat different language: "The quality and allegiance of those who own, occupy and use farm lands within its borders are matters of highest importance to the safety and power of the State itself." The second part of the proposition is, that without the ban "every foot of land within the state might pass to the ownership or possession of non-citizens". *Terrace v. Thompson, supra*, 263 U. S. at pp. 220-222 (applied with respect to the California law in *Parterfield v. Webb*,

²⁹ Even in the field of naturalization, the racial basis used by Congress has been criticized. See Gordon, *The Racial Barrier to American Citizenship*, (1945), 93 U. of Pa. L. Rev. 237; McGovney, *supra*, note 8, pp. 37-48.

supra, 263 U. S. at p. 233, and adopted by the court below in this case, R. 115).³⁰

Each of the two parts of the argument is not only unconvincing but meaningless. The fact that a farmer such as Kajiro Oyama, living in this country, devoting his life to the soil and raising children who are privileged to be American citizens, cannot himself exercise this privilege has nothing to do with his character or his loyalty to the United States. He has as much at stake in the economic, social and political fortunes of the state as anyone else. Will he acquire a greater interest in the welfare of the state by being legislated into landlessness? The Court has recently expressed itself on another Japanese alien in very apposite language (*Ex parte Kawato*, 317 U. S. 69, 71):

" * * * Nothing in this record indicates, and we cannot assume, that he came to America for any purpose different from that which prompted millions of others to seek our shores—a chance to make his home and work in a free country, governed by just laws, which promise equal protection to all who abide by them."

Kajiro Oyama cannot become a citizen not because of anything he has done, but because of an act of Congress. The German alien, the Russian alien, the British alien, may all hold agricultural land in California. There is nothing about the Japanese alien to distinguish him from the others except his race and color. But, as this Court said in *Ex parte Endo*, 323 U. S. 283, 302: "loyalty is a matter of the heart and mind, not of race, creed or color."

No one, we submit, can seriously believe that the fact of eligibility to citizenship can create an automatic presumption of loyalty or of good character where there was neither loyalty nor good character before. On the contrary, one might well suggest that a person who *could* become a citi-

³⁰ See also *Mott v. Cline*, 200 Cal. 434, 253 Pac. 718, 724, where the court below stated that the "ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of a state."

zen, but has not done so, has shown less interest in the United States than one who is ineligible for reasons beyond his control. Yet in the State's Brief in Opposition (p. 14) we find echoes of the old prejudices which have been almost universally condemned. We are reminded that Japanese carry "the hall-mark of Oriental despotisms"; we are referred to their "lack of assimilation", and their "solidarity", and the suggestion is made that they are "not fitted and suited to work for the success of a republican form of government."

Even were all this true, the relationship to ownership of agricultural land is still *nil*. What can be the purpose of denying a race so characterized this one right? To paraphrase Mr. Justice Butler's point, in what respect is the "safety and power" of the state affected by the allegiance of some small portion of the owners of farm land?³¹ If the safety of the state is the criterion—and if we are willing to make the assumption that the Federal Government lacks adequate powers to defend the United States³²—the effect is precisely the opposite to that which is intended. The inevitable consequence is to drive the Japanese aliens to the urban areas, where under conditions of modern warfare the danger of espionage and sabotage is far greater than it would be were the Japanese aliens located in rural communities.

But, in fact, the charges are not true. Mr. Justice Murphy was right in saying that every charge "relative to

³¹ Perhaps Mr. Justice Butler had in mind the ancient rationalization by Lord Coke, *supra*, p. 32, which had references to feudal concepts and feudal conditions, and was out of date by 1400. Military tenure was formally abolished in 1660, 12 Car. II, c. 24. But even if we have an echo of the Middle Ages, it is apparent that it does not warrant discrimination *among* aliens as respects the right to own land.

³² The experience of the last war demonstrated that it is not impotent, and that no help from anti-Japanese land laws is necessary. *Hirabayashi v. United States*, 320 U. S. 81; *Korematsu v. United States*, 323 U. S. 214.

race, religion, culture, geographical location and legal and economic status has been substantially discredited by independent studies made by experts in these matters." *Kore-matsu v. United States*, 323 U. S. 214, 237.³³ It is reported, that no case of espionage or sabotage by any person of Japanese ancestry domiciled in the United States—or in Hawaii, for that matter—was uncovered during the entire course of the war.³⁴ Loyalty and allegiance, just as in the case of other aliens, was a matter of individual feeling, not of racial characteristics.³⁵ Mr. Ferguson (*supra*, note 8) states (p. 84):

"Thousands of the aliens in the relocation centers streamed out to plant and harvest sugar beets and other vital war crops. Many others found maintenance jobs on railroads, employment at ordnance depots, positions in military language schools and war agencies, and other war-connected service. Probably no better proof of the assimilation of the Japanese exists than the record of the 23,000 Japanese-American lads, the sons of the aliens so vilified by the race-baiters, who fought brilliantly in both the European and Pacific war theaters. The simple truth is that the vast majority of the Japanese in this country are bound to us by the most powerful economic, family and personal considerations. Discrimination against them in the ownership

³³ See Strong, *The Second Generation Japanese Problem* (1934); McWilliams, *Prejudice*, (1944); Millis, *The Japanese Problem in the United States* (1915), 148, 215; W. R. A. *Myths and Facts About the Japanese Americans* (1945); Ferguson, *supra*, note 8, pp. 79-84.

³⁴ Ferguson, *supra*, note 8, pp. 83-84. Fleet Admiral Nimitz recently stated: "Before World War II, I entertained some doubt as to the loyalty of American citizens of Japanese ancestry in the event of war with Japan. From my observations during World War II, I no longer have that doubt. * * * I know of no cases of sabotage or subversive activities during my entire service as Commander in Chief of the Pacific Fleet and Pacific Ocean areas." House Committee on Public Lands, *Hearings on Statehood for Hawaii*, 80th Cong., 1st Sess., pp. 63-65 (1947).

³⁵ H. Rep. No. 2124, *supra*; note 8, pp. 142-151.

of land on the basis of inability to be assimilated or because of closer ties to the motherland than other groups of immigrants is unwarranted.³⁶

The second part of Mr. Justice Butler's syllogism—that all the land in the state might be owned by ineligible aliens—is, if anything, even more palpably unreasonable. Again, one is reminded of Lord Coke's rationalization of the early prohibition against alien landholding in England—that if aliens could own land, there might not be enough freeholders left in England to supply the juries. Pp. 32-33, *supra*. In 1910, the California Japanese population was 41,356, of whom 4,502 were American citizens. In 1920, the total had risen to 71,952, but the percentage of citizens had risen to

³⁶ See also President Truman, to the 442d Combat Team, July 15, 1946, quoted in *People in Motion*, *supra*, note 15, p. 19. The petition of the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the United Spanish War Veterans, and later the A. F. of L. and the C. I. O., to the Legislature of Utah to repeal the Alien Land Law of that state, said: "The Alien Land Law denies the right to 'acquire, possess or transfer real property' to those alien Japanese who though actual citizens of enemy Japan contributed so much to our victory over that enemy in counter-intelligence, as instructors in the Army and Navy Language Schools, on the production line of war industries, and on the farm." *Pacific Citizen*, Nov. 30, 1946, p. 1; *People in Motion*, p. 22. The law was repealed. Secretary of Interior Krug has testified that "these particular American citizens and law-abiding aliens have borne with patience and undefeated loyalty the unique burdens which this government has thrown upon them." *Pacific Citizen*, May 4, 1946, p. 1. Edward J. Ennis, Director of the Alien Enemy Control Unit in the United States Department of Justice during the war, testified: "I know that the overwhelming majority of the Japanese alien population were law abiding residents. I have no doubt that most of them would have been naturalized citizens if our laws had permitted their naturalization. I know personally of many cases in which they not only did not interfere with, but indeed urged their United States born children to join our armed forces and to fight the enemy—even the Japanese enemy." *Hearings on H.R. 2933*, 80th Cong., 1st Sess., April 23, 1947, p. 87.

about one-third.³⁷ In the latter year, the percentage of California farms controlled by Japanese aliens and citizens alike was but 4.4, and they comprised only 1.2 percent of the state's agricultural land.³⁸

From 1920 to 1940, the total Japanese population in California increased from 71,952 to 93,717, while the percentage of American citizens increased to two-thirds.³⁹ But during this period the percentage of Japanese controlled farms—again aliens *and* citizens—decreased from 4.4 to 3.9 percent, and the acreage from 1.2 to 0.7 percent.⁴⁰

In 1940, the census reports show 33,569 Japanese aliens in California. The number is now, of course, materially less. They are the persons who entered before 1924. In 1940 all but 2760 were 35 years of age or older,⁴¹ and more than half were over 50 years of age. Seven years have now passed, those age figures have now risen to 42 and 57, and death is beginning to take a more rapid toll. Even between 1920 and 1940, the number of Japanese aliens decreased 42 percent.⁴² Moreover, the same census reports show that a large number of the Japanese aliens are engaged in non-agricultural work,⁴³ and are, like the Chinese, presumably no "menace" in the sense in which Mr. Justice Butler used the term.

³⁷ Ichihashi, *supra*, note 8, p. 320; Ferguson, *supra*, note 8, p. 77.

³⁸ H. Rep. No. 2124, *supra*, note 8, p. 122.

³⁹ *Id.* at pp. 91, 96.

⁴⁰ *Id.* at p. 122. See also *Japanese Farm Holdings on the Pacific Coast* (U. S. Dept. of Agriculture, 1944) p. 9.

⁴¹ 1940 Census, *Characteristics of the Non-White Population*, Table 33.

⁴² 1940 Census, *II Characteristics of the Population*, Pt. I, p. 21.

⁴³ 1940 Census, *Characteristics of the Non-White Population*, Table 38. Compare *Id.*, Table 44, which shows that a far greater proportion of Filipinos are engaged in agriculture work than Japanese aliens.

Finally, the results of the war-time evacuation cannot be ignored. The War Relocation Authority has recently estimated that no more than 60 percent of the evacuees have returned to their former homes, and the remaining 40 percent have remained east of the evacuation boundary.⁴⁴ Assuming that the tendency of older people would be to return to their former homes,⁴⁵ and that the proportion of Japanese aliens who returned to California was larger than the proportion for all persons of Japanese extraction, the total for California now cannot be more than 25,000.⁴⁶

Even on the 1940 figures, the proportion of Japanese aliens is utterly insignificant. The 33,509 Japanese aliens, as compared with the total 1940 California population of 6,907,387, are only about one-half of one percent. Compared with the total of all aliens in California, they are only about .6 percent.⁴⁷ Even were we to grant the premise that "ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of the state", it cannot justify banning this mere handful of aliens of one race from ownership of land.

On neither branch of Mr. Justice Butler's second argument does he carry conviction. Neither the characteristics nor the numbers of ineligible aliens—Japanese—bear out his justification of the law. Nor, as we have seen, is his first argument adequate. We submit, therefore, that the decisions of 1923 which held the California Alien Land Law to be constitutional were and are unsound, and should now be overruled.

In justice, however, it must also be conceded that conditions have now changed. Perhaps one can fairly say that the 1923 decisions are as anachronistic as they are erroneous.

⁴⁴ *People in Motion*, *supra*, note 15, p. 12.

⁴⁵ *Id.*, pp. 13-15.

⁴⁶ Cf. McGovney, *supra*, note 8, pp. 14-15.

⁴⁷ Rep. Atty. Gen. 259 (1941). California has more aliens than any other state except New York.

ous. Among the more obvious differences is, of course, the fact that the class of "ineligible aliens" has shrunk until now it is practically synonymous with "Japanese", due to the successive changes in the naturalization laws by Congress since 1923. See pp. 31-32, *supra*. Again, there is the almost exclusively anti-Japanese record of enforcement, which was not so apparent in 1923. The horrendous possibilities of all of California being owned by ineligible aliens, envisioned in 1923, can now be safely dismissed. Moreover, in 1923, the facts as to the origins and history of the law were not, unfortunately, brought to the attention of the Court. This Court, on other occasions, has found different constitutional answers in the light of changing facts. *Nashville, C. & St. L. Ry. v. Walters*, 294 U. S. 405, 415; *Chastleton Corp. v. Sinclair*, 264 U. S. 543, 547; *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282, 289. As the New York Court of Appeals has expressed it, in reaching a constitutional result opposite to that it had held eight years before: "There is no reason why we should be reluctant to give effect to new and additional knowledge upon such a subject as this even if it did lead us to take a different view of such a vastly important question * * *." *People v. Schweinder Press*, 214 N. Y. 395, 412, 108 N. E. 639, 644 (1915).

But even more significant than any of these factors is the intrusion of a new factor which completely destroys the principal basis upon which Mr. Justice Butler relied—that the "safety" of the state was at stake, and could be protected by the device of denying these aliens the right to own lands. See pp. 42-48, *supra*. Not only has the fact belied the fear, as shown by the experience of the last war, but that field has been completely and effectively occupied by the Federal Government.

The California Alien Land Law must, in the nature of things, always have been perilously close to an invasion of a federal field. Not only did it nullify, *pro tanto*, a federal immigration policy (see *Estate of Yano*, *supra*, pp. 24, 36), but it dealt of necessity in an area of highly sensitive inter-

national relations. In *Hines v. Davidowitz*, 312 U. S. 52, 64-66, this Court said:

"One of the most important and delicate of all international relationships, recognized immemorially as a responsibility of government, has to do with the protection of the just rights of a country's own nationals when those nationals are in another country. Experience has shown that international controversies of the gravest moment, sometimes even leading to war, may arise from real or imagined wrongs to another's subjects inflicted, or permitted, by a government."

"Legal imposition of distinct, unusual and extraordinary burdens and obligations upon aliens *** thus bears an inseparable relationship to the welfare and tranquility of all the states, and not merely to the welfare and tranquility of one."

The question of Mr. Justice Miller in *Chy Lung v. Freeman*, 92 U. S. 275, 279, is peculiarly appropriate: "If [the United States] should get into a difficulty which would lead to a war, or to suspension of intercourse, would California alone suffer, or all the Union?"⁴⁸

In more recent years, however, the complete absence of any basis for state action in the field of alien control in the interest of safety has become so plain as to make the statements in *Terrace v. Thompson* obsolete. Aliens have been registered by the Federal Government. *Hines v. Davidowitz*, 312 U. S. 52. Alien enemies have been brought fully within Federal control, with imprisonment of those con-

⁴⁸ We have seen above the fact that Federal officials, including the President and the Secretary of State, did in fact intervene in the California legislature in an attempt to prevent the passage of the law, first successfully and later not. Pp. 25-26, supra. And, in fact, there were immediate international repercussions caused by its passage. U. S. Department of State, *American-Japanese Discussions Relating to Land Tenure Law of California*, (1919); Millis, *The Japanese Problem in the United States*, pp. 281, *et seq.* (1915); Ichihashi, *supra*; note 8, Ch. 17; H. Rep. No. 2124, *supra*, note 8, pp. 85, *et seq.*

sidered dangerous, and sequestration of all alien enemy property. An Alien Enemy Control Unit was set up in the Department of Justice. Full measures were taken to prevent any danger to the safety of any state by any non-citizens within our borders.

Indeed, with respect to the aliens from which California assumes to secure itself by this law—the Japanese—the Federal Government assumed complete control. Not only were the general Federal safeguards applicable, but the Federal Government completely eliminated even the possibility of danger to California by physically removing *all* Japanese aliens—and their citizen descendants—from California, and depriving them of all contact with the state and its activities by detaining them in camps. *Korematsu v. United States*, 323 U. S. 214; *Ex parte Endo*, 323 U. S. 283. Every aspect of their economic and even of their personal life was controlled by the Federal Government. Indeed, we can go farther: the Federal Government is also, and inevitably, concerned with the relocation of the aliens whom it thus removed from California. In that respect, the Alien Land Law is a direct interference with Federal power. The Department of the Interior, charged with responsibility for that relocation purpose, has reported within the past month (*People in Motion, supra*, note 15, p. 46):

“The present effect of the Alien Land Law [of California] on that adjustment is large, since a considerable proportion of these people have been and remain dependent upon agriculture for their livelihood. In the preparation of this report, no other problem facing the Japanese American people was found to represent so serious an obstacle to adjustment.”⁴⁹

⁴⁹ The ultimate question, the Court said in the *Hines* case, is whether the state law was “an obstacle to the accomplishment of the full purposes and objectives of Congress.” 312 U. S. at p. 67. Note also that in determining that question, the factors which the court there deemed relevant are also present here. The state legislation there in question concerned aliens, “* * * a field which affects international relations, the one aspect of our government

No matter how the State chooses to argue, the answer, we think, must be the same. If, on the one hand, the State recognizes that it can no longer seek to justify the law on the basis of the "safety" of the State, then the 1923 decisions lose their only claim to validity, and the law must fail. If, on the other hand, the State chooses to continue to rely on the discredited rationalization of state safety advanced by the District Court in *Terrace v. Thompson*, and adopted by Mr. Justice Butler, it must perforce admit that California has invaded deeply a field which not only should be, but in fact is, the exclusive concern of the Federal Government. That being so, the state law must also fail. *Hines v. Davidowitz, supra; Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148; cf. *Allen Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740. See Note, 60 Harv. L. Rev. 262 (1946).

Finally, we should add that the United States is concerned in still another fashion. By the United Nations Charter—having the force of a treaty—the United States has agreed, in Article 55c, to foster—

"universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

And Article 56 continues:

"All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

that from the first has been most generally conceded imperatively to demand broad national authority. Any concurrent state power that may exist is restricted to the narrowest of limits; the state's power here is not bottomed on the same broad base as its power to tax. And it is also of importance that this legislation deals with the rights, liberties, and personal freedoms of human beings, and is in an entirely different category from state tax statutes or state pure food laws regulating the labels on cans." 312 U. S. at p. 68.

The Charter adds one more compelling reason to those already stated in the *Hines* case for exclusive Federal action. A discriminatory law denying Japanese aliens, solely because of their race, the rights vouchsafed to all others, aliens and citizens, is peculiarly a law which flaunts, for all the world to see, a conflict with the Charter. Cf. *Re Drummond Wren* [1945] O. R. 788, in which a Canadian court held a restrictive covenant against Jews void as against public policy, relying in part on the Charter.

IV.

THE DECISION OF THE COURT BELOW, IN DENYING PETITIONERS THE PROTECTION OF THE CALIFORNIA STATUTE OF LIMITATIONS, DENIES THEM DUE PROCESS OF LAW.

We have already pointed out that for a decade or more before Pearl Harbor, due to the exigencies of international relations, the Alien Land Law had not been enforced. Not a single escheat action had been begun against a Japanese in the entire period from 1930 to 1942. Consequently, when the sudden surge of anti-Japanese propaganda that accompanied the war and the evacuation program burst in full flower in the 1943-1945 period, the State found a legal barrier against its revised campaign—the statute of limitations. Its method of solution, again in disregard of constitutional rights, is but a further evidence of the general pattern.

A brief summary of the California law will make the point clear.

Section 312 of the Code of Civil Procedure of California provides:

"Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute."

A later section of the Code makes clear that "action" is not used in any restrictive fashion. Section 363 states:

"The word 'action' as used in this title is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature."

Various periods of limitation are set out for various types of civil actions. The longest period of limitations is that contained in Section 315. It provides:

"The people of this state will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the people to the same, unless—

"1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced; or,

"2. The people, or those from whom they claim, shall have received the rents and profits of such real property, or some part thereof, within the space of ten years."⁵⁰

Petitioners relied upon the statute of limitations with respect at least to the property transferred to Fred Oyama in 1934, more than ten years prior to the date of institution of this suit. The court below, however, managed the extraordinary conclusion that no statute of limitations applied. The court stated (R. 119):

" * * * the 'different limitation' mentioned in section 312 clearly should be construed to include no limitation as to an action commenced under a statute which specifies that time shall not bar the right to invoke its provisions."

The Alien Land Law, however, did not, until 1945 "specify that time shall not bar the right to invoke its provi-

⁵⁰ The Code also applies a one-year statute of limitations to "An action upon a statute * * * for a forfeiture or penalty to the people of this state" (Section 340(2), and a three-year limitation to actions for relief on the ground of fraud (Section 338(4)).

sions." Until then, the laws of California, which of course must be read as an integrated body of statutes, had only one provision which bore on this point—that contained in Section 315? "The people of this state will not sue any person for or in respect to any real property . . . by reason of the right or title of the people to the same", unless the right or title accrues within ten years. Fred Oyama had been the record owner of one of the two tracts here involved—that which he was given in 1934—for more than ten years before 1945, when this action was begun, and when the California legislators purported to add a *different* period of limitations for the land law.

The new provision, which was added to the legislation in 1945 provided:

"No statute of limitation shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions"

of the Alien Land Law. The 1945 Act further stated, "The amendment made by this act does not constitute a change in, but is declaratory of, the pre-existing law."

The court below, it is true, said that even prior to 1945 the Alien Land Law was "inconsistent with a statute of limitations". It may be doubted whether under the provisions above quoted any such construction is even within the realm of judicial interpretation. In any event, where a right is asserted under the Federal Constitution, it is not only within the power of this Court, but it is its obvious obligation, to determine independently whether any constitutional right has been denied. *Atlantic Coast Line R. R. v. Thompson*, No. 385 (Oct. Term, 1946, decided June 23, 1947); *Hawks v. Hamill*, 288 U. S. 52, 59; *Coombes v. Getz*, 285 U. S. 434, 441; *Gelpke v. Dubuque*, 1 Wall. 175, 206-207.

If, upon a true construction of the Alien Land Law and the Code of Civil Procedure, taken together, there was, before 1945, a 10-year statute of limitations, it is submitted

that the lifting of the bar of the statute to deprive Fred Oyama, or Kajiro Oyama, of land which they had prior to the passage of the 1945 Act, is unconstitutional. *Stewart v. Keyes*, 295 U. S. 403; *Campbell v. Holt*, 115, U. S. 620, *Chase Securities Co. v. Donaldson*, 324 U. S. 304. In the *Stewart* case the Court stated (p. 417):

"We are of opinion that so much of the section as purports to free from any bar of the statutes of limitation a cause of action such as is here presented, notwithstanding the full period of limitation had run prior to the act's approval, falls nothing short of an attempt arbitrarily to take property from one having a perfect title and to subject it to an extinguished claim of another.

"As respects suits to recover real or personal property where the right of action has been barred by a statute of limitations and a later act has attempted to repeal or remove the bar after it became complete, the rule sustained by reason and preponderant authority is that the removing act cannot be given effect consistently with constitutional provisions forbidding a deprivation of property without due process of law. 'The reason is,' as this Court has said, 'that, by the law in existence before the repealing act, the property had become the defendant's. Both the legal title and the real ownership had become vested in him, and to give the act the effect of transferring this title to plaintiff, would be to deprive him of his property without due process of law.'

That, we submit, is the situation here.

CONCLUSION

Wherefore, the decision below should be reversed.

Respectfully submitted,

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APPENDIX "A"

The California Alien Land Law (Alien Property Initiative Act of 1920, as amended, Stats. (1921) p. lxxxiii, in effect, December 9, 1920; amended by Stats. (1923) c. 441, p. 1020; Stats. (1927) c. 528, p. 880; Stats. (1943) c. 1093, p. 2917, c. 1059, p. 2999; Stats. (1945) c. 1129, p. 2114, c. 1136, p. 2177; Peering's Gen. Laws; Act 267) provides in part as follows:

"Sec. 1. All aliens, eligible to citizenship under the laws of the United States may acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the same manner and to the same extent as citizens of the United States except as otherwise provided by the laws of this state. (Amended by Stats. 1923, p. 1021.)

"Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy, use, cultivate, occupy and transfer real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the manner and to the extent, and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise. (Amended by Stats. 1923, p. 1021.)

"Sec. 4. Whenever any alien mentioned in Section 2 hereof is appointed by any court as a guardian of his native-born minor child or children, or as a guardian of any other person or persons, it shall be unlawful for such said alien guardian to farm, operate or manage any land or lands held by such guardianship estate, except solely for the use and benefit of the ward or wards of said estate, or to enjoy, possess or have, in whole or in part, the beneficial use of any such said land or lands so held or possessed or which belong to any such said guardianship estate, nor shall said alien guardian have or enjoy or receive directly or indirectly the beneficial use of such said lands or the proceeds received from the sale of any crops produced, grown, or raised thereon, it being the intent of this section that no alien mentioned in Section 2 hereof shall by any guardian-

ship proceedings whatsoever evade or violate or seek to evade or violate any of the provisions of this statute.

"In all such said guardianship estates, the alien guardian must make every year a report to the court in which said guardianship estate is pending, showing in detail and supported by receipts, all money disbursed, expended and paid out by said guardian, to whom same was paid, for what purpose, and the date of such said disbursement or payment. Also all money received, from whom received, for what purpose received, and the date of the receipt thereof. A copy of said report shall be served by the guardian on the district attorney of the county, and said guardian shall give said district attorney notice of the hearing of said report. Failure on the part of the said alien guardian so to make such report, or serve such copy thereof, or notify such district attorney shall constitute a direct violation hereof, for which said guardian may be prosecuted and punished as set forth in Section 10a of this act.

"Said alien guardian shall include in such report such other matters and items as the court may require, the said alien guardian to be under the absolute jurisdiction and control of the court at all times, and the court may from time to time require said alien guardian to make special reports on all things pertaining to said guardianship estate. The court may also require the ward of any such said guardianship estate to be produced in court whenever said court may deem such procedure necessary and proper for the protection of said guardianship estate.

"The court shall have the power to fix the compensation of the said alien guardian at such amount as the court may determine. The court shall also fix the amount of bond to be given by said alien guardian. The court shall also fix and determine the amount of attorney's fees in all such guardianship matters.

"Whenever any alien guardian shall fail, neglect or refuse to comply with the terms and provisions hereof, he may be removed as guardian of said estate by the court, when deemed to be for the best interests of said estate.

"The court shall require a final account to be filed on behalf of any such guardianship estate at the time the ward or wards shall become 21 years of age. The court may also require such matters to be included in said report as said court may deem to be necessary and proper. No such guardianship estate shall be finally closed until the final report shall have been filed and approved by the court. (As amended by Stats. 1943, Ch. 1059, Secs. 1, 2.)

"Sec. 5. (a) The term "trustee" as used in this section means any person, company, association or corporation that as guardian, trustee, attorney in fact or agent, or in any other capacity has the title, custody or control of property, or some interest therein, belonging to an alien mentioned in section two hereof, or to the minor child of such alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it.

(b) Annually on or before the thirty-first day of January every such trustee must file in the office of the secretary of state of California and in the office of the county clerk of each county in which any of the property is situated, a verified written report showing:

(1) The property, real or personal, held by him for or on behalf of such alien or minor;

(2) A statement showing the date when each item of such property came into his possession or control;

(3) An itemized account of all such expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in respect to land and the handling or sale of products thereof.

(c) Any person, company, association or corporation that violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(d) The provisions of this section are cumulative and are not intended to change the jurisdiction or the rules of practice of courts of justice.

"Sec. 7. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in Section 2 of this act, or by any company, association or corporation mentioned in Section 3 of this act, shall escheat as of the date of such acquiring, to, and become and remain, the property of the State of California. (As amended by Stats. 1945, Ch. 1129.)

"Sec. 8.5. No statute of limitations shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions of this act. (Added by Stats. 1945, Ch. 1136, Sec. 1.)

(The statute adding this section provides further: "See. 2. The amendment made by this act does not constitute a change in, but is declaratory of, the pre-existing law.")

"Sec. 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the State and the interest thereby conveyed or sought to be conveyed shall escheat to the State as of the date of such transfer, if the property interest involved is of such a character that an alien mentioned in Section 2 hereof is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

"A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:

"(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof;

"(b) The taking of the property in the name of a company, association or corporation if the memberships or shares of stock therein held by aliens mentioned in Section 2 hereof, together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a majority of the membership or issued capital stock of such company, association or corporation;

"(c) The execution of a mortgage in favor of an alien mentioned in Section 2 hereof if such mortgagee is given possession, control or management of the property.

"In each of the foregoing instances the burden of proof shall be upon the defendant to show that the conveyance was not made with intent to prevent, evade or avoid escheat.

"The enumeration in this section of certain presumptions shall not be so construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein. (Amended by Stats. 1945, Ch. 1129, Sec. 4)"

APPENDIX "B"**Civil Escheat Proceedings Instituted by the California Attorney General's Office Under the Alien Land Law**

(Compiled from Biennial Reports of the California Attorney General's Office from 1912-14 through 1944-46)

Aliens "ineligible for naturalization"

	Chinese	Indians	Koreans	Japanese	Others	
1912-14						
1914-16	1				1	
1916-18					1	
1918-20					1	
1920-22					7	
1922-24	1				3	
1924-26						
1926-28						
1928-30				1		
1930-32						
1932-34	1					
1934-36						
1936-38						
1938-40						
1940-42						
1942-44				4		
1944-46				55		
Total	2	1	0	73	0	=76

APPENDIX "C"

Cases Involving California Alien Land Law Reported in Official California Reports as of August 19, 1947

*Cases Involving Japanese***Escheat cases:**

State v. Tagami, 195 Cal. 522 (1925)

People v. Fujita, 215 Cal. 166 (1932)

People v. Nakamura, 125 Cal. App. 268 (1932)

People v. Oyama, 29 Adv. Cal. Rep. 157 (the case at bar)

People v. Ikeda, 78 ACA 610 (rehearing granted, August 1, 1947)

Non-Escheat cases:

In re Akado, 188 Cal. 739 (1922)

In re Okahara, 191 Cal. 353 (1923)

People v. Cockrill, 62 Cal. App. 22 (1923), *aff'd*, 268 U. S. 258

People v. Entriken, 106 Cal. App. 29 (1930)

People v. Osaki, 209 Cal. 169 (1930)

Takeuchi v. Schmuck, 206 Cal. 782 (1929)

Shiba v. Chikuda, 214 Cal. 786 (1932)

Saiki v. Hammock, 207 Cal. 90 (1929)

In re Nose, 195 Cal. 91 (1924), (appeal dismissed, 273 U. S. 772)

People v. Morrison, 218 Cal. 287, *rev'd on other grounds*, 291 U. S. 82

People v. Morrison, 125 Cal. App. 282 (appeal dismissed, 288 Cal. 591)

Tetsubumi Yano Estate, 188 Cal. 645 (1922)

Porterfield v. Webb, 195 Cal. 71 (1924)

Toshiro v. Jordan, 201 Cal. 236, *aff'd*, 278 U. S. 123

Gonzales v. Ito, 12 Cal. App. (2d) 124 (1936)

Jones v. Webb, 195 Cal. 88 (1924)

Dudley v. Lowell, 201 Cal. 376 (1927)

Suwa v. Johnson, 54 Cal. App. 119 (1921)

Hart v. Nagasawa, 218 Cal. 685 (1933)

Nishi v. Downing, 21 Cal. App. (2d) 1 (1937)

Heywood v. Sooy, 45 Cal. App. (2d) 423

*Cases Involving Other Than Japanese***Escheat cases:**

None

Non-Escheat cases:

California Delta Farms, Inc. v. Chinese American Farms, Inc., 204 Cal. 524

California Delta Farms, Inc. v. Chinese American Farms, Inc., 207 Cal. 208 (appeal dismissed, 280 U. S. 520) (Chinese)

Alsafera v. Fross, 26 Cal. (2d) 358 (Filipino)

Mott v. Cline, 200 Cal. 434 (1927) (Chinese)

Carter v. Utley, 195 Cal. 84 (1924) (Indian)

People v. Singh, 1 Cal. App. (2d) 729 (Indian)

Babu v. Peterson, 4 Cal. (2d) 276 (1935) (Indian)

Jack v. Wong Shee, 33 Cal. App. (2d) 702 (Chinese)

FILE COPY

IN THE
Supreme Court of the United States

Office - Supreme Court U. S.
FILED

MAR 27 1947

CHARLES ELMORE GREGORY
CLERK

OCTOBER TERM, 1946.

No. [REDACTED]

44

FRED Y. OYAMA AND KAIRO OYAMA,

Petitioners,

v.s.

STATE OF CALIFORNIA.

BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI:

FRED N. HOWSER,

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1946.

No. 1059.

FRED Y. OYAMA AND KAJIRO OYAMA,

Petitioners,

vs.

STATE OF CALIFORNIA.

BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI.

The State of California presents herewith its brief in opposition to the petition of Fred Y. Oyama and Kajiro Oyama for a writ of certiorari to the Supreme Court of the State of California, which petition seeks to review the judgment and decision reported at 29 Advance California Reports, 157, 173 P. (2d) 794.

Statement of the Case.

The complaint alleged in substance: That Kajiro Oyama and his wife, Kohide Oyama, are natives and citizens of Japan, and, consequently, ineligible to citizenship in the United States; that they purchased certain agricultural land in San Diego County for their own use and benefit in violation of the Alien Land Law; taking title to the land in the name of their minor son, Fred Yoshihiro Oyama, a citizen of the United States.

Defendant's answer admitted the race and citizenship of the parents, Kajiro Oyama and Kohide Oyama, but alleged as an affirmative defense [R. 54, 55] that the transaction constituted a *bona fide* gift from the parents to the child. The language of the answer is as follows:

"Defendants aver that Kajiro Oyama, the father, furnished the funds and/or credits to purchase the said property as a gift for his child, Fred Y. Oyama, and that said entire transaction was a *bona fide* gift and not a subterfuge and fraud upon the People of the State of California, as alleged in the complaint."

It was further conceded by defense counsel in his opening statement at the trial [R. 80] that the burden of proof rested on the defendants to sustain their affirmative defense and to overcome the presumption set forth in Sec. 9 of the Alien Land Law (Stats. 1921, p. lxxxiii, as amended by Stats. 1923, p. 1024, Deering's Gen. Laws, Act 261). Mr. Wirin's statement reads:

"By way of finality, we think the central situation is the good or bad faith of the transaction. We concede that under the statute there is a presumption and we admit that the burden is upon us to overcome the presumption and we hope to be able to overcome that presumption."

The presumption in question imposed by Section 9 of the Act reads as follows:

"A *prima facie* presumption that the conveyance is made with such intent (*i. e.*, 'with intent to prevent, evade or avoid escheat') shall arise upon proof of any of the following groups of facts:

—3—

(a) The taking of the property in the name of a person other than the persons mentioned in section two hereof (*i. e.*, in the name of an alien eligible to citizenship) if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two hereof (*i. e.*, an ineligible alien)."

Notwithstanding the admission of the answer that the consideration was furnished by the ineligible alien father, and the concession in the opening statement that the burden of proof rested upon the defendants to overcome the presumption that the payment of the consideration tends to establish the beneficial ownership in the ineligible alien rather than in the person whose name title is taken, the defense refused to produce the defendant Kajiro Oyama (the ineligible alien father) as a witness, either as a hostile witness under Section 2055 of the Code Civ Proc. as part of the plaintiff's case [R. 97, 98], or as part of the defendants' case [R. 100]. The defendant Kajiro Oyama was available, as admitted by his counsel [R. 98, 99], and the trial court [R. 103] drew an inference that his testimony would be unfavorable to his case; that is, that the failure of the defense to call one of the principal defendants to the witness stand and, particularly, by stratagem to keep him out of the courtroom so as to make his testimony unavailable to the plaintiff unless subpoenaed amounted to a willful suppression of evidence.

It was further alleged in the complaint [R. 4] and admitted in the answer by failure to deny [R. 53, 55] as well as established by testimony [R. 83, 84] that no

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accounts or reports were ever filed with the Secretary of State, or with the County Clerk as required by Section 5 of the Alien Land Law in cases where a valid relation of guardian and ward exists. The trial court specifically found against the affirmative defense [R. 60, 61].

Statement of Questions Presented.

- I. As to petitioner Fred Y. Oyama, is any federal question presented where the California Courts determined as a fact that at no time did he have any right, title or interest in the property involved?
- II. As to petitioner Kajiro Oyama, is any federal question presented where he disclaimed in all the proceedings in the California Courts any right, title or interest in the property involved?
- III. Is there any discrimination here which impinges upon the Fourteenth Amendment?
- IV. Is there any support in the record or elsewhere for the charge that the Alien Land Law has been unfairly or unequally administered so as to deny equal protection?
- V. As to the statute of limitations, does not the petition fail to disclose wherein any federal or constitutional question was raised in the court below, and fail to disclose any other than a procedural question of California law?

Argument.

I.

Any present claim of ownership by the minor Fred Y. Oyama is precluded by the determination of fact in the Superior Court and the approval by the Supreme Court of California that the factual determination is supported by sufficient evidence. As shown by the preceding statement, counsel for petitioner stated to the Superior Court [R. 80] that the question of fact to be determined was the *bona fides* of his clients. During the presentation of the State's case defense counsel was asked to produce his clients for cross-examination, as contemplated by California Code of Civil Procedure, Section 2055, which was refused. After the State of California had closed its case, defense counsel again declined to produce his witnesses and thus allowed the case to be decided practically by default in spite of his earlier admission that the principal fact to be ascertained by the trial judge was the good faith of his clients. It is settled law in California that the refusal of a party to appear as a witness amounts to a willful suppression of evidence and may be given great weight by the trial court in determining the facts in issue.

Bone v. Hayes, 154 Cal. 759, 765;

People v. Adamson, 27 Cal. (2d) 478 at 493;

Lyenders v. Calif. Hawaiian, etc., Co., 59 Cal. App. (2d) 752;

Bertelson v. Bertelson, 49 Cal. App. (2d) 479 at 493;

Winkie v. Turlock Irrigation Dist., 24 Cal. App. (2d) 1, and *Cf.*

Twining v. New Jersey, 211 U. S. 78;
2 Wigmore, Evidence (3d Ed.), 164.

In addition to the refusal of the defendants to testify, reliance was placed by the California Supreme Court upon the statutory presumption contained in section 9 of the Alien Land Law, which reads as follows:

"A *prima facie* presumption that the conveyance is made with such intent (to prevent, evade, or avoid escheat) shall arise upon proof of any of the following group of facts:

"(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof."

This statutory presumption has been heretofore sustained and upheld in *Cockrill v. California*, 268 U. S. 258, as well as in several decisions of the California courts.

People v. Cockrill, 62 Cal. App. 22;

Takeuchi v. Schmuck, 206 Cal. 782;

People v. Fujita, 215 Cal. 166.

It is clear that the basic claim of petitioner Fred Y. Oyama is that the finding against his ownership of the land is not sustained by sufficient evidence. This, it is submitted, is not a federal question. If in fact Fred Y. Oyama is the owner the State of California does not for a moment question his unqualified rights as a citizen. The basis of the action is the State's assertion that the

name of the minor child was used by the alien parent as a subterfuge for evasion of the law. The determination of that fact by the California Courts deprived the minor of nothing.

Objection is made that evidence was received and considered showing that the alien father and guardian failed and neglected to file the accounts and reports required by the Alien Land Law. It is argued in effect that whatever violations of law committed by the father after the purchase of the land are not attributable to the son. This argument overlooks the point that the basic fact to be determined was the good faith of the parents. Was the land actually a gift from parent to child, or was the transaction merely a sham to conceal from the State the parents' illegal ownership? Surely there is no federal or constitutional question involved in considering the subsequent conduct of the parents as having evidentiary value tending to prove the intention of the alien parents at the time of purchase.

The argument that an unreasonable burden of proof may be placed upon the citizen of Japanese descent is out of place under the facts here involved. No effort was made by the defendants to introduce any evidence, even though witnesses were available. The courts of California have heretofore determined in *People v. Fujita*, 215 Cal. 166, the kind of evidence which sufficiently establishes the good faith of the transaction. Neither the statute nor its application is unreasonably harsh or oppressive. The distinction made in *Heiner v. Donnan*, 285 U. S. 312, cited by petitioners is well illustrated in the *Fujita* case.

In the *Heiner* case a statute created a conclusive presumption that a transfer made without consideration with-

in two years before the death of a donor was made in contemplation of death. The court held there was no doubt as to the power of Congress to create a rebuttal presumption, but held that the attempt to make the presumption conclusive denied due process because of lack of "regard to actualities." Justices Stone and Brandeis dissented, holding that the presumption was reasonable, saying (at 342):

"The existence of facts underlying constitutionality is always to be presumed, and the burden is on him who assails the selection of a class."

And at 348:

"The very power to classify involves the power to recognize and distinguish differences in degree between those things which are near and those which are remote from the object aimed at. . . ."

The courts of California have not fully clarified the relative probative value of statutory presumptions as opposed to contrary testimony, but it has been held that a presumption is evidence, and that the trial court may properly conclude that a presumption outweighs in evidentiary value the testimony of many witnesses.

Speck v. Sarves, 20 Cal. (2d) 585;

People v. Chamberlain, 7 Cal. (2d) 257;

Lane v. Whitaker, 50 Cal. App. (2d) 327 at 330.

If, however, the testimony is undisputed and not inherently improbable, it need only be sufficient to balance the presumption. As stated in *Mar Shee v. Maryland Assur. Corp.*, 190 Cal. 1 at 9,

"A fact is proved as against a party when it is established by the uncontradicted testimony of the

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party himself or of his witnesses, under circumstances which afford no indication that the testimony is the product of mistake or inadvertence; and (that) when the fact so proved is wholly irreconcilable with the presumption sought to be invoked, the latter is dispelled and disappears from the case."

See, also, *Speck v. Sarves*, 20 Cal. (2d) 585 and the dissenting opinion of Mr. Justice Traynor at 590, and *Engstrom v. Auburn, etc., Co.*, 11 Cal. (2d) 64 at 70.

But in the case at bar we have the full probative force of several presumptions with no testimony opposed to the presumptions. In such cases the rule is that if the party against whom a presumption operates fails to come forward with substantial evidence tending to prove the non-existence of the facts presumed, his opponent with the burden of proof is entitled to an instruction that the facts exist. (*Wigmore, Evidence*, 3d Ed., Secs. 2487, 2489, 2491; *Thayer, A Preliminary Treatise on Evidence*, 314-315, 317; *1 Jones, Evidence*, 2d Ed., 54; *Stafford v. Martinni*, 192 Cal. 724; *People v. Harris*, 169 Cal. 53; *People v. Ellis* 206 Cal. 353; *California Code Civ. Proc.*, Sec. 1961.)

If, therefore, the Alien Land Law is constitutional for any purpose it does not deny due process or equal protection in requiring the defendants to come forward in open court with affirmative evidence of non-violation.

At page 11 of the petition appears the argument that since Section 4 of the Alien Land Law as it read from 1923 (Stats. 1923, Ch. 441, p. 1021) to 1943 (Stats. 1943, Ch. 1059, p. 2999), purported to forbid the appointment of an ineligible alien as guardian, he need not, after his

appointment as guardian, file the reports required by Section 5, which has not been amended since 1923 (Stats. 1923, Ch. 441, p. 1022). This argument overlooks the circumstance that in *Estate of Yano*, 188 Cal. 645, the Supreme Court of California held that due process and equal protection compel the issuance of letters of guardianship in a parent and child relationship. In the instant case the Superior Court in 1935 [R. 59], granted letters of guardianship to Kajiro Oyama, relying undoubtedly on the *Yano* decision in preference to Section 4 as amended in 1923. The California law undoubtedly was such in 1935 that Section 4 was invalid in so far as it forbade the appointment of Kajiro Oyama as guardian. But the provisions of Section 5 apply to all guardians as well as other fiduciaries, and were not complied with. Even though Section 4 did not before it was repealed and a new Section 4 enacted in 1943, require accounts and reports to be filed in court by guardians, such accounts and reports are required of all guardians by the California Probate Code. Section 1553 requires all guardians to file their accounts with the court annually.

As to the minor Fred Y. Oyama, it is therefore submitted that he is trying to escape from a simple finding of fact based upon sufficient evidence, and that he presents no federal question whatever. (*Bell Telephone Co. v. Pennsylvania*, 309 U. S. 30; *Arrowsmith v. Harmoning*, 118 U. S. 194; *Barrington v. Missouri*, 205 U. S. 483; *Los Angeles F. & M. Co. v. Los Angeles*, 217 U. S. 217; *West v. Louisiana*, 194 U. S. 258; *Prince v. Massachusetts*, 321 U. S. 158.)

Kajiro

II.

The father, ~~Fred Y.~~ Oyama, by his verified answer filed in the Superior Court [R. 54-55] denied his ownership of the property, denied that he occupied or cultivated the land as his own, and denied that he at any time had in his own right the beneficial use and enjoyment of the land or the crops grown thereon.

Can he now be heard to attack the constitutionality of an act which resulted in an escheat to the State of California of property in which he asserts no beneficial or other ownership? His position at all times previous to the decision of the California Supreme Court was that he had made a *bona fide* gift to his son. The State's position is that had the trial court found such to be the fact the State would be zealous in protecting such property rights, but that the alien father not only has no interest in the property or in these proceedings—in lead, until the present moment he has not suggested any. It is respectfully suggested that a re-examination of the question of the constitutionality of the California Alien Land Law be deferred until a case is presented in which an alien claims an actual interest in the property. The issue as to Kajiro Oyama seems obviously moot and feigned. (*Market St. Ry. v. Railroad Commission*, 324 U. S. 548; *Natural Milk Producers v. San Francisco*, 317 U. S. 423; *Cincinnati v. Vester*, 284 U. S. 439; *Liberty Warehouse Co. v. Burley Tobacco Growers*, 276 U. S. 71.)

III.

Up to this point we have confined ourselves to the question of jurisdiction of this Court in the instant case, where the father disclaimed all interest and where it was found by the court that the son never acquired any interest. We believe that under these circumstances no justiciable question is here presented.

However, being aware that this Court has jurisdiction in proper cases to reexamine earlier decisions—even though they have been followed and relied upon for many years—we turn to the question as to whether there exists any discrimination impinging upon the Fourteenth Amendment—which issue arises if it is deemed that there is jurisdiction to consider such questions in the instant case.

Petitioners would have us believe that heretofore the subject of discrimination has never received enlightened or liberal consideration. But the fact that Mr. Justice Holmes joined in the opinions deciding the four cases submitted to this Court in 1923,¹ and Mr. Justice Brandeis deemed that no justiciable question was involved therein and that the cases should have been dismissed, is indication to us that such liberal minds have not regarded this legislation as offensive to the Constitution.

Race prejudice and race hatreds, as such, are ugly things. We have neither the desire nor do we believe we are under any necessity to excuse or defend these things

¹*Terrace v. Thompson*, 263 U. S. 197; *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313; *Frick v. Webb*, 263 U. S. 326.

which petitioners and the *amici curiae* seek to make the focal point of this case. What we conceive to be the point in question here is something else, viz., the validity of limiting the right to own land to those who can become citizens of this nation (subject, of course, to treaty provisions). Eligibility to citizenship does not rest or depend upon considerations of race, color or creed, as such, as petitioners would have us believe. For example, it can scarcely be said that the prohibition to naturalization of subversive persons set forth in the Naturalization Code (§ U. S. C. Sec. 705) bears any relationship whatever to these things. In recognizing eligibility to citizenship as a proper classification in legislation of the kind here involved we believe it is clear that both this Court and the California courts have acted from considerations far more searching than likes or dislikes addressed to color of skin or form of worship.

If a classification be made by reference to a place of origin, ancestry, or country of allegiance characterized by certain concepts of government or certain ideologies or philosophies of living inimical or at least not conducive to the success, well being or preservation of our republican form of government, the circumstance that a different race or color may also characterize those peoples so identified cannot be said, we believe, to constitute the controlling motive or object. Coincidence may exist in any classification. Many peoples of much greater divergence in color and certainly equally at variance in racial origin; whose concepts have not been hostile to those upon which this nation is founded, have been extended the right of citizenship by this nation.

While the decision of the Circuit Court of Appeals in *Terrace v. Thompson* (274 Fed. 841, at 849), may be regarded as severe when it referred to certain Asiatic peoples as being characterized by "the hall-mark of Oriental despotism," but it illustrates what we have said. It is plain that it was looking to underlying concepts and tendencies of deepest significance and importance with which the peoples in question were deemed to be imbued, and that questions as to race or color, as such, played no part as a determining factor in the classification.

"It was deemed (by Congress) that the subjects of these despotisms, with their fixed and ingrained pride in the type of their civilization, which works for its welfare by subordinating the individual to the personal authority of the sovereign, as the embodiment of the state, were not fitted and suited to make for the success of a republican form of government.

It is this disqualification put upon them by the federal government to which the state objects; and not their color, although the federal government may have made their race or color the irrefutable evidence of disqualification for citizenship."

Terrace v. Thompson, supra, at 849.

We are not without comparatively recent expression from this Court as to the situation in this country as related to the Japanese. Their lack of assimilation, their "solidarity", were discussed with what we consider great candor, fairness and liberality by Mr. Chief Justice Stone in *Hirabayashi v. United States*, 320 U. S. 81 at 96, 87 L. Ed. 1774 at 1784. The social, economic and political conditions contributing to these things were there reviewed. In footnote No. 4 of the decision a summary of the kinds

of so-called discrimination which have been employed without offense to constitutional considerations is set forth. This was a decision sustaining a wartime curfew regulation applicable to alien and citizen of Japanese ancestry alike. The later decisions of this Court in *Ex Parte Endo*, 323 U. S. 283, 65 S. Ct. 208, and *Korematsu v. United States*, 323 U. S. 214, 65 S. Ct. 193, deal with the rights of loyal citizens to freedom from arbitrary detention in relocation centers. The prohibition of the Alien Land Law is not against citizens, but against aliens—those aliens who cannot be bound to us by the oath of allegiance. We are dealing here not with loyalty, but with fraud and deceit, found and determined after a fair trial in open court. If the distinction made by the California statute between eligible and ineligible aliens is to fail because of some inseparable connection with race found to exist, how then can the naturalization and immigration laws escape being struck down on the same ground? This Court has consistently upheld these laws. Further—it has held that the naturalization laws constitute a proper classification in state statutes on the subject here involved.

The naturalization laws are discussed at length in *Terrace v. Thompson*, 263 U. S. 197; 44 S. Ct. 15. It is there stated by this court that, while Congress is nottrammeled and may grant or withhold the privilege of naturalization as it sees fit, it is not to be supposed that its acts defining eligibility are arbitrary or unsupported by reasonable considerations of public policy. This Court held:

“The state properly may assume that the considerations upon which Congress made such classification are substantial and reasonable.” (263 U. S. 197, at 220, 44 S. Ct. 15, at 19.)

The argument is made in the briefs filed in support of the petition that while the power of Congress in this field is without limitation that of the state is circumscribed and cannot here rest upon the determination made by Congress. However, this Court held the following in *Terrace v. Thompson, supra*:

“Two classes of aliens inevitably result from the Naturalization Laws—those who may and those who may not become citizens. The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership as defined in the act.” (263 U. S. 197, at 220; 44 S. Ct. 15, at 19.)

The attack of petitioners would appear to be leveled at Congress, rather than at the legislature of the state. It is not to be denied that there has been discrimination in our naturalization laws ever since they were first enacted in 1790. Since then the enumeration of the peoples to whom the privilege is granted has been expanded at various times and it is not improbable that it may one day embrace all peoples of the earth. On the other hand, critical exigencies may, within the realm of possibility, indicate a further narrowing of the privilege—perhaps from considerations not heretofore encountered. Until such time, however, as it may be all-inclusive, those denied the right of citizenship constitute a distinct class, and the classification one which this Court has held furnishes a reasonable basis for state legislation as to ownership of land. It has long been held that a state may even deny this right to all aliens. Here the right is withheld, subject to treaty provisions, from those only who cannot under our laws be bound to us by the oath of allegiance.

While reference to treaty rights may have slight bearing upon the question of discrimination, it is of some interest to note that, so far as the right of Japanese subjects to own land in this nation is concerned, provision for this could have been readily inserted in the Treaty of Commerce and Navigation of 1911 (37 Stat. 1504-1509) between the United States and the Empire of Japan. However, Japan did not wish it so. In construing that treaty this Court held in *Terrace v. Thompson*, 263 U. S. 197, at 223; 44 S. Ct. 15, at 21:

"The letter of Secretary of State Bryan to Viscount Chinda, July 16, 1913, shows that, in accordance with the desire of Japan, the right to own land was not conferred."

In criticising the eligibility-to-citizenship classification of the Alien Land Law petitioners indulge in speculative comparisons as to the degrees of loyalty to be found among those eligible and those not eligible to become citizens. They contend that it is more harsh and oppressive to prohibit ownership of land to ineligible aliens than it would be to make the restriction apply to those who are eligible but who have not declared their intention to become citizens. We think it obvious that instead of being more restrictive the rule adopted is far more liberal. It extends the right to all who are given the privilege of becoming citizens, for each one of these, upon becoming acquainted with our country and its customs and concepts of government, may elect to apply for citizenship and subscribe to the oath of allegiance, whereupon he unquestionably has the same rights as every other citizen.

The speculative comparison of possible loyalty to this nation of one ineligible to become a citizen with a possible

lack of loyalty on the part of one already a citizen or at least eligible to become such, which is indulged in by petitioners, involves a question of the personal equation, an individualized attitude of heart and mind—something as to which classifications upon a reasonable basis cannot be and are not required to be infallible.

IV.

On page 18 of the petition, as well as in portions of the *amici curiae* briefs, are found statements that the Alien Land Law has been enforced discriminately against the Japanese in California. Nowhere is reference made to any authentication or support in the record for any of these statements. No instance can be shown where this law has been unconstitutionally applied or administered. Whatever may be the bare assertions made as to number of proceedings or nationality of the defendants, no fair inference can be drawn therefrom as to their merits. It would be equally as proper for us to state the number of instances in which proceedings have *not* been commenced, or the number of instances in which the defendants have sought to bring about settlements by compromise.

Petitioners' assertion that the Alien Land Law is enforced only against Japanese offenders might be answered by the statement that they constitute the offenders. Congress has admitted almost no Chinese since the Chinese Exclusion Laws of 1882. Filipinos have never been forbidden to own land in California. (*Alfarà v. Fross*, 26 Cal. (2d) 358.) Hindus have in fact violated the Alien Land Law, although not so persistently as the Japanese, and have been prosecuted for such violations.

Since Congress in 1924 adopted amendments to the Immigration Laws which curtailed Japanese immigration to a substantial degree, the influx of ineligible aliens seeking to ~~acquire~~ large areas of land has been much less. Up to that time at least the threat of appreciable portions of the state's agricultural lands passing to those ineligible to make this their country of sworn allegiance presented a serious problem amounting to a "clear and present danger." In a very real sense it has been believed that it was owed to the great majority who obeyed and observed the law that it should be enforced against those who defied and violated it.

We have yet to have any instances pointed out in which the administration of the statute has been discriminatory. When violations of the law have been discovered, proceedings have been commenced—as directed by its provisions. The law has long been upon the statute books and has been repeatedly sustained as to its constitutionality by the courts. No justification whatever can be shown for citing *Yick Wo v. Hopkins*, 118 U. S. 356, or *Hill v. Texas*; 316 U. S. 400, as bearing any relation to the administration of the Alien Land Law.

V.

The statute of limitations is the kind of procedural question which the highest court of a state may appropriately decide for itself without impinging upon the federal domain. (*Preston v. Chicago*, 226 U. S. 447; *Moran v. Horisky*, 178 U. S. 205; *Wood v. Chesborough*, 228 U. S. 672; *Harrison v. Myer*, 92 U. S. 111; *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287.) Particularly does this observation apply when no sugges-

tion of a federal question is made in the courts below. The question of the running of the statute of limitations was briefed and argued both on demurrer in the Superior Court and on appeal in the California Supreme Court. Nowhere in the proceedings was it suggested that a federal question was involved, nor does the petition assert that the point was raised below as a federal question, nor has any suggestion been heretofore made that a constitutional question was involved. (*Barrington v. Missouri*, 205 U. S. 483; *Radio Station WOW v. Johnson*, 326 U. S. 120; *Spies v. Illinois*, 123 U. S. 131; *Rogers v. Clark Iron Co.*, 217 U. S. 589.) The United States Supreme Court has no jurisdiction to consider a federal question not presented to the state courts even though another federal question properly raised is presented. (*Montana v. Rice*, 204 U. S. 291.)

The argument contained in the brief of American Civil Liberties Union, *amicus curiae*, that the United Nations Charter contains treaty provisions in conflict with the California Alien Land Law is answered by the same argument and authorities. The point was not raised or passed upon in the State courts and cannot be presented here. The State court has decided that title to one parcel has been in the State of California since 1934, and as to the other parcel since 1937 [R. 59, 62]. Section 7 of the Alien Land Law has provided at all times since 1923 that escheat is automatic. The statement by the California Supreme Court [R. 118] is, "Title vested in the state upon these dates, and later legislation has no effect upon that title."

The discussion found at R. 119 concerning the running of the statute of limitations makes it clear that at no time

did the petitioners enjoy any vested right even as a right of repose. The possession of the ineligible aliens was tortious, scrambling, and has been determined as a matter of local law and local legislative intent not to have conferred any rights or defenses upon the petitioners. The two cases cited in the petition, *Campbell v. Holt*, 115 U. S. 620; and *Chase Securities Corp. v. Donaldson*, 325 U. S. 304, well illustrate the distinction between a vested or clearly established legal right or title which is protected against subsequent interference by the state, and the sort of inchoate and dubious position in which petitioners found themselves. It is also settled as a matter of local law that acts of limitation affect the remedy and not the right.

Doebla v. Phillips, 151 Cal. 488;

Davis & McMillan v. I. A. C., 198 Cal. 631;

Rhoda v. Alameda County, 34 Cal. App. 726 at 735;

Spect v. Spect; 88 Cal. 437;

Puckhaber v. Henry, 152 Cal. 419;

Olinda Irrigated Lands Co. v. Yank, 27 Cal. App. (2d) 58 at 61.

To make the distinction even clearer, it was conceded by the State before the California Supreme Court that the minor citizen Fred Oyama or any other person not under disability has legal capacity to acquire as against the State a good title by prescription or adverse possession, the property not being owned by the State in a governmental but only in a proprietary capacity. (*People v. Kings Development Co.*, 177 Cal. 529; *People v. Center*, 66 Cal. 551.) The ineligible alien father, by contrast, could not acquire a title by adverse possession, being con-

tinuously incapable of owning or acquiring any interest in land.

Adverse possession under the California decisions is required to be pleaded and proved as an affirmative defense, which was not done here.

Reed v. Smith, 125 Cal. 491;

Warden v. Bailey, 133 Cal. App. 383.

Mere hostile occupancy does not defeat an owner's title.

McKelvey v. Rodriguez, 57 Cal. App. (2d) 223;

Westphal v. Arnoux, 51 Cal. App. 532.

Since, therefore, as to private owners the California courts declare that a mere interloper or trespasser must, in order to defend a possessory action successfully, assert a positive defense of adverse possession instead of relying on the mere passage of time, there is no discrimination or denial of due process in the ruling of the California Supreme Court. Instead, the State has merely been granted the same treatment as any other litigant.

It is not contended that the State of California can revive or that the legislature or courts intended to revive a cause of action previously and effectively barred by the running of a statute of limitations. It is contended that the determination of local legislative intent and other aspects of local statutory interpretation are exclusively for the determination of the California courts.

While petitioners do not make a positive claim that there was any "lifting of the bar of the statute of limitations" in the Alien Land Law as applied to this case, they do complain (Pet. 27) of the clarification made by the 1945 legislature and suggest that the California Supreme Court

"relied" upon this "to a very considerable extent." What that Court did in its decision was to state the "clear and unmistakable purpose of the Alien Land Law at all times since it was enacted. . . ." and to hold that its provisions are "entirely inconsistent with a statute of limitations." There can be no question as to the effect of this determination. But even had the California legislature in 1945 enacted a measure basically and ~~or~~ wholly changing a provision theretofore in effect—instead of, as it did, merely declaring and clarifying the preexisting law which was under attack—the only authorities cited by petitioners (Pet. 27) do not support their contention. *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U. S. 304, 65 S. Ct. 1137, upheld in essence *Campbell v. Holt*, 115 U. S. 620, 6 S. Ct. 209, and decided that even where the Minnesota legislature had enacted a new statute during the pendency of the litigation, lifting the bar of the preexisting statute of limitations, and this new change was followed by the Minnesota Supreme Court, the Fourteenth Amendment was not impinged upon.

"Whatever grievance appellant may have at the change of policy to its disadvantage, it acquired no immunity from this suit that has become a federal constitutional right."

Sinclair & Carroll Co. v. Interchemical Corp., 325 U. S. 304, at 316, 65 S. Ct. 1137, at 1143.

In the *Sinclair & Carroll Co.* case a new, a changed law was put into effect during the pendency of the litigation. In the instant case no change was made. The court merely pronounced what the law had always been, since its inception.

Conclusion.

It is respectfully submitted that the petition for a writ of certiorari to the Supreme Court of California be denied for the following reasons:

1. No federal or constitutional question is presented as to either petitioner Kajiro Qyama or Fred Y. Oyama, the former having disclaimed all interest and the latter having been found never to have acquired an interest.
2. There is no discrimination to be found in the Alien Land Law which impinges on the Fourteenth Amendment.
3. Neither in the record nor elsewhere can it be shown that this law has been unconstitutionally applied or administered.
4. No federal constitutional right has been denied by the California Supreme Court's ruling that the Alien Land Law is not subject to a statute of limitations.

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IN THE

U.S. Supreme Court U.S.

FILED

OCT 15 1947

Supreme Court of the United States

OCTOBER TERM, 1947

No. 44

FRED Y. OYAMA AND KAJIRO OYAMA,

Petitioners,

vs.

STATE OF CALIFORNIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
CALIFORNIA.

BRIEF FOR RESPONDENT.

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BRIEF FOR RESPONDENT.

Opinions Below.

The findings of fact and conclusions of law in the Superior Court [R. 58-64] are not reported. The opinion in the Supreme Court of California [R. 102-120] is reported in 29 Advance California Reports 157; 173 P. (2d) 794.

Jurisdiction.

The judgment of the Supreme Court of California was entered October 31, 1946 [R. 121]. An order denying these petitioners' petition for rehearing was entered November 25, 1946 [R. 120]. Petition for a writ of cer-

tiorari was filed on February 25, 1947, and was granted on April 7, 1947 (330 U. S. 818). The jurisdiction of this Court rests upon Section 237(b) of the Judicial Code, as amended.

Questions Presented
(as stated by Petitioners).

1. Whether the Alien Land Law, as applied in this case, deprives petitioner Fred Oyama, an American citizen, of the equal protection of the laws and of the privileges and immunities of a citizen, in violation of the Fourteenth Amendment to the Constitution.
2. Whether the Alien Land Law, as enforced and as applied in this case, deprives petitioner Kajiro Oyama, an alien of the Japanese race, of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution.
3. Whether the decision of the Supreme Court of California, holding that no statute of limitations is applicable to actions for escheat under the Alien Land Law, is not a retroactive reopening of a vested title to real estate which also violates the Fourteenth Amendment.

Statutes Involved.

The relevant provisions of the California Alien Land Law (Alien Property Initiative Act of 1920, Cal. Stats. (1921) p. lxxxiii), as amended, are set out in Appendix A, *infra*.

Statement.

The petition for escheat [R. 1] which was filed in the Superior Court of the State of California in and for the County of San Diego on August 28, 1944, alleged in substance: That Kajiro Oyama and his wife, Kohide Oyama, are natives and citizens of Japan, and, consequently, ineligible to citizenship in the United States; that they purchased certain agricultural land in San Diego County for their own use and benefit in violation of the Alien Land Law, taking title to the land in the name of their minor son, Fred Yoshihiro Oyama, a citizen of the United States.

Although it is stated at page 16 of Petitioners' Brief that the defendants in that action "have been for most of the time in a detention camp and easily available to the State," respondent's information is that the Oyama family were never held in a detention camp or a relocation center, but that they voluntarily left California sometime prior to the general evacuation and resided at the time the proceeding was filed at 383 North 4 West, Payson, Utah. The Superior Court accordingly made its order for publication [R. 10] directing the defendants Oyama to be notified by mail at that address, and the defendant June Kushino to be served at Chicago, Illinois. The defendants appeared voluntarily in the action on November 6, 1944 [R. 17], and on February 17, 1945, filed their demurrer and points and authorities in support thereof [R. 18]. The demurrer was fully argued and was overruled by written opinion of the Superior Court [R. 38],

and thereafter the answer was filed on April 28, 1945 [R. 53].

Defendants' answer admitted the race and citizenship of the parents, Kajiro Oyama and Kohide Oyama, but alleged as an affirmative defense [R. 54-55] that the transaction constituted a *bona fide* gift from the parents to the child. The language of the answer is as follows:

"Defendants aver that Kajiro Oyama, the father, furnished the funds and/or credits to purchase the said property as a gift for his child, Fred Y. Oyama, and that said entire transaction was a *bona fide* gift and not a subterfuge and fraud upon the People of the State of California, as alleged in the complaint."

It was further conceded by defense counsel in his opening statement at the trial [R. 80] that the burden of proof rested on the defendants to sustain defendants' affirmative defense and to overcome the presumption set forth in Sec. 9 of the Alien Land Law (Stats., 1921, p. lxxxiii, as amended by Stats., 1923, p. 1024, Deering's Gen. Laws, Act 261). Mr. Wirin's statement reads:

"By way of finality, we think the central situation is the good or bad faith of the transaction. We concede that under the statute there is a presumption and we admit that the burden is upon us to overcome the presumption and we hope to be able to overcome that presumption."

The presumption in question imposed by Section 9 of the Act reads as follows:

"A *prima facie* presumption that the conveyance is made with such intent (*i.e.*, 'with intent to prevent, evade or avoid escheat') shall arise upon proof of any of the following groups of facts:

“(2) That taking of the property in the name of a person other than the persons mentioned in section two hereof (here, in the name of a citizen) if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two hereof (*i. e.*, an ineligible alien).”

Notwithstanding the admission of the answer that the consideration was furnished by the ineligible alien father, and the concession in the opening statement that the burden of proof rested upon the defendants to overcome the presumption that the payment of the consideration tends to establish the beneficial ownership in the ineligible alien rather than in the person in whose name title is taken, the defense refused to produce the defendant Kajiro Oyama (the ineligible alien father) as a witness, either as a hostile witness under Section 2055 of the Code of Civil Procedure as part of the plaintiff's case [R. 97-99], or as part of the defendants' case [R. 100]. The defendant Kajiro Oyama was available, as admitted by his counsel [R. 98], and the trial court [R. 103] drew an inference that his testimony would be unfavorable to his case; that is, that the failure of the defense to call one of the principal defendants to the witness stand and, particularly, by stratagem, to keep him out of the courtroom so as to make his testimony unavailable to the plaintiff unless subpoenaed amounted to a willful suppression of evidence.

It was further alleged in the complaint [R. 4], and admitted in the answer by failure to deny [R. 53-55], as well as established by testimony, as to the County Clerk's office [R. 83] that no accounts or reports were ever filed with the Secretary of State, or with the County

Clerk as required by Section 5 of the Alien Land Law in cases where a valid relation of guardian and ward exists. The trial court specifically found against the affirmative defense [R. 61].

The issues were determined by the Superior Court as follows: The defendants' demurrer was argued before Honorable Charles C. Haines, and on March 2, 1945, a written opinion overruling the demurrer was filed. This opinion is found in the Transcript of Record [p. 38]. Thereafter the defendants' answer was filed and a trial had before Honorable Joe L. Shell, who found for plaintiff and delivered a brief oral decision [R. 101-103].

The testimony of the witness John C. Kurfurst is summarized by the Supreme Court of California as follows:

"Upon the trial of these issues, John C. Kurfurst was the only witness. He testified that he had known the Oyama and Kushino families since about 1932. When the Japanese were evacuated from the Pacific coast, he rented the land in controversy and, by two checks, paid the rent to Fred Oyama. These checks were returned to him endorsed in that name. Kurfurst had never heard the name Kajiro Oyama; he had always known the father of the family as 'Fred' and stated that 'everybody else called him Fred.' But he had received a letter signed 'Fred Oyama' notifying him that the property was being turned over to a Mr. Kelly although Kurfurst had never heard the writer refer to himself by that name."

"Other testimony of Kurfurst was that at one time Oyama [fol. 192], senior, said: 'Some day the boy

will have a good piece of property because that is going to be valuable.' However, he admitted that in a letter which he wrote, in referring to 'Fred Yoshihiro Oyama,' he meant the son and not the father. He knew that the property belonged to the boy, Fred Oyama, and to June Kushino; also that the father was running the boy's business. But he did not know whether the checks were made out to the 'old man or the young fellow' and he did not know 'whether the boy signed it or Mr. Oyama.' "

Statement Concerning Specification of Errors.

By demurrer in the trial court [R. 18] the defendants raised a federal question as follows:

"The California Alien Land Law is unconstitutional in that, under the Constitution of the United States, it deprives the defendants of liberty and property, and of the equal protection of the laws, under the XIVth Amendment to the Constitution of the United States; and abridges the rights of the defendants under the Constitution of the State of California to due process of law under Article I, Section 13 of the Constitution of the State of California, and of privileges guaranteed by Article I, Section 21 of said Constitution."

The California Supreme Court [R. 108-109] states that as to both Kajiro Oyama and Fred Oyama the issues of due process and equal protection have been raised, and as to defendant Fred Oyama the further issue of his privileges and immunities as a citizen were raised and consid-

ered. It is submitted by respondent that none of the following items urged by the brief were at any time raised below either in the Supreme Court or in the Superior Court, and that, consequently, these issues should be removed from the present case and not be considered further, upon the authority of such cases as *Barrington v. Missouri*, 205 U. S. 483; *Radio Station WOW v. Johnson*, 326 U. S. 120; *Montana v. Rice*, 204 U. S. 291.

The questions which respondent alleges were never raised before are as follows:

1. Specification No. 3: That California removed a statute of limitations which had already run (Br. for Pet. pp. 3, 53, *et seq.*).
2. The effect of the United Nations' Charter (Br. for Pet. p. 52).

(Note that the theory of the California Alien Land Law and the finding and judgment of the California courts is that the State of California became the owner of Parcel No. 1 on August 18, 1934 [R. 60], and became the owner of Parcel No. 2 on December 17, 1937 [R. 62]. The California Supreme Court specifically holds [R. 117] that the land escheated to the State *instante*, a conclusion which is also supported by *People v. Nakamura*, 125 Cal. App. 268.)

3. The *amicus curiae* has contended further that the California Alien Land Law is violative of the civil rights provision found at U. S. Code, Title 8, section 41. Not only has this point not been raised in the courts below, it apparently is not even raised by the parties to the proceeding.

SUMMARY OF ARGUMENT.

Introductory.

What appellants ask this Honorable Court to do at this time is to disaffirm and overrule decisions which have for over two decades stood as a well-defined and positive pronouncement of the constitutionality of the California Alien Land Law. If this end is not attainable by them they ask, and this is the real substance of their request, that this Court announce that the considerations upon which its decisions have been based were but passing shibboleths, no longer to be accorded the dignity of judicial recognition.

This Court is here asked to strike down a decision of the Supreme Court of the State of California which is bottomed upon direct and unequivocal assurances of the highest tribunal in the land that both due process and equal protection of the laws are vouchsafed by this law.

The state has been assured (1) that the Fourteenth Amendment does not take from it those police powers that were reserved at the time of the adoption of the Constitution; (2) that in the exercise of such powers it has wide discretion in determining its own public policy and what measures are necessary for its own protection, and properly to promote the safety, peace, and good order of its people; (3) that in adjusting legislation to the need of the people of a state, the legislature has a wide discretion and it may be fully conceded that perfect uniformity of treatment of all persons is neither practical nor desirable;

(4) that it has the power to deny to the aliens the right to own land within its borders and that such legislation applying alike to all within the class cannot be said to be capricious or arbitrary; (5) that two classes of aliens inevitably result from the Naturalization Laws,—those who may and those who may not become citizens; and (6) that the rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership. *Terrace v. Thompson*, 263 U.S. 216.

These are the basic principles which this Court is asked to disavow in the request made that its former decisions be overruled.

I.

As to the claim of Fred Oyama that he has been denied equal protection and the privileges and immunities of a citizen, the State of California does not question that he is a citizen and entitled to full protection of all the rights of citizenship without reservation. The Superior Court found as a fact and the Supreme Court of California affirmed as supported by sufficient evidence, that Fred Oyama was never the owner of property and that the deed purporting to convey title to him was given him by his ineligible alien father as a subterfuge and fraud upon the state and without intending or effecting a *bona fide* gift. In part this evidence consisted of a presumption that beneficial ownership in the ineligible alien will arise when it is proved, or as in the present case, admitted by an-

swer, that the purchase price was paid by the ineligible alien. The presumption applies equally to all persons in whose name title to land is placed, where the purchase price was so paid.

The presumption of the California statute is not conclusive and has not been construed by the California courts to be other than rebuttable. (*People v. Fujita*, 215 Cal. 166, 171.) Being rebuttable it has a reasonable basis, and will be sustained as a proper exercise of the police power. (*Heiner v. Donnan*, 285 U. S. 312.)

The appeal as to the minor citizen Fred Oyama is primarily a question of fact. California has no intention or desire to deprive her citizen of property. California's courts have determined as a fact that Fred Oyama is not and has never been the owner of the property in question.

II.

As to the constitutionality of the California Alien Land Law, California does not attempt to sustain the reasonableness or scientific or moral justification of race discrimination. California urges instead the following points:

1. The constitutionality of the Alien Land Law has been previously sustained by this court.
2. The classification of aliens ineligible to citizenship cannot be said to be exclusively racial; it has existed in the Federal law throughout the history of the nation; it is not intrinsically unreasonable; the State may assume that what has existed without in-

terruption in Congressional legislation has a rational basis and may be adopted as a primary standard for secondary State legislation upon this subject.

3. It may be reasonably said that there is a positive correlation between eligibility to citizenship on the one hand and loyalty and active interest and ability to work for the safety and welfare of the State on the other. This correlated relationship is a proper basis for the exercise of police power with regard to land ownership.

4. Subsequent to the decisions of this court in 1923 sustaining the Washington and California laws, eight other states have adopted similar legislation, indicating that the reasonableness of the Alien Land Laws has met with considerable general acceptance.

5. Petitioners have neither averred nor proved that the Alien Land Law is not enforced against all offenders. That most of the litigation stemming from the Statute involves Japanese results from the fact that most violators are Japanese. Congress has admitted almost no Chinese since 1882. Hindus have in fact violated the Law and have been prosecuted when violations were discovered.

III.

That at the time of its adoption there was a rational basis for the Alien Land Law in so far as the Japanese people is concerned is demonstrated by this Court's decision in *Hirabayashi v. United States*, 320 U. S. 81. The rule laid down by Congress in its Naturalization Laws is a valid standard for the classification and continues to

provide such a standard. Even were it to be assumed that changed conditions and circumstances as of 1947 might in some way bring about a changed status of the law, this could not affect the escheat of the lands here involved, which took place in 1934 and 1937, respectively. Subsequent events such as the United Nations Charter and the admission of Chinese, Filipinos, or natives of India to eligibility to citizenship cannot divest the State of California of property to which it succeeded by operation of law.

The Alien Land Law does not impinge on any statutory field pre-empted by the Federal government. The Statute concerns itself with the regulation of ownership of land within its boundaries, which is recognized as within her exclusive province in the absence of treaties. Other effects are purely incidental and cannot be said to transgress constitutional limits. *Clark v. Allen*, 67 Sup. Ct. Rep. 1431, 1439.

IV.

It is urged that California has denied due process by holding inapplicable its own statute of limitations, Section 315 of the Code of Civil Procedure, adopted in 1872. The California Supreme Court held below that the Alien Land Law, adopted in 1920 was entirely inconsistent with a Statute of Limitations, in that an ineligible alien who could not own, possess, enjoy, use, cultivate, or occupy land could not by ten years' occupancy acquire any prescriptive right to continue that which the statute made him continuously incapable of doing. This construction of the State Law, it is submitted, went entirely to a matter of local procedure and does not present any federal question nor infringe any constitutional right.

ARGUMENT.

Introductory.

A. What Does the Alien Land Law Do?

The so-called Alien Land Law of California¹ legislates as to the right of land ownership in that state. The right governed by the statute is not limited to mere acquisition and ownership. By its definition this right includes that to "acquire, possess, enjoy, use, cultivate, occupy and transfer real property," also to "have in whole or in part the beneficial use thereof." (Alien Land Law, secs. 1, 2.)²

This right is given to citizens of the United States and to all aliens eligible to become such; aliens who are not eligible to citizenship under the laws of the United States can enjoy the right only in the manner and to the extent and for the purposes prescribed by any treaty, existing at the time of the enactment of the statute (*i. e.*, on December 9, 1920), between the government of the United States and the nation or country of which the alien is a citizen or subject, "and not otherwise." (Alien Land Law, secs. 1, 2.)

Where the property interest involved in an attempted acquisition is of such character that the ineligible alien "is inhibited from acquiring, possessing, enjoying, using,

¹Act 261, Deering's General Laws, 1937, designated as "Alien Property Initiative Act of 1920." Submitted by initiative and approved by electors November 2, 1920, Stats. 1921, p. lxxxiii, in effect December 9, 1920. Amended by Stats. 1923, Chap. 441; Stats. 1927, Chap. 528; Stats. 1943, Chap. 1059; Stats. 1945, Chaps. 1129, 1136."

²For purposes of brevity and convenience the term "Alien Land Law" will be used when referring to the statute designated in note ¹.

cultivating, occupying, transferring, transmitting or inheriting it" and if the conveyance is made "with intent to prevent, evade or avoid escheat," the transfer of the real property, or any interest therein, though colorable in form, *shall be void as to the State* and the interest thereby conveyed or sought to be conveyed *shall escheat to the State as of the date of such transfer.* (Allen Land Law, sec. 9, as amended in 1923. Stats. 1923, p. 1024.)

Section 7 of the statute, as amended in 1923. (Stats. 1923, p. 1023), and as it has since continued in effect to the present time, also provides that the real property acquired in violation of the act by an ineligible alien "shall escheat as of the date of such acquiring, to, and become and remain the property of the State of California."

B. Is the Classification Valid?

As for the basis of the classification, *i. e.*, that of eligibility to citizenship, this Court has held:

"Two classes of aliens inevitably result from the naturalization laws—those who may and those who may not become citizens. The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership as defined in the act. We agree with the court below [274 Fed. 841, 849] that: 'It is obvious that one who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of, the states and, so lacking the state may rightfully deny him the right to own and lease real estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot'

of land within the state might pass to the ownership or possession of noncitizens . . . The quality and allegiance of those who own, occupy and use the farm lands within its borders are matters of highest importance and affect the safety and power of the state itself."

(*Terrace v. Thompson*, 263 U. S. 197, 220-221; 44 Sup. Ct. 15, 20.)

The California Supreme Court, in *Mott v. Cline*, 200 Cal. 434, quoted the above language of the United States Supreme Court in *Terrace v. Thompson, supra*, and in very positive terms upheld the Alien Land Law as a lawful exercise of the police power. We quote its language:

"It has been firmly settled by the decisions of both federal and state courts (citing decisions) that the adoption of the Alien Land Acts was a lawful exercise of the police power. In fact, it is the exercise of that power *in its highest and truest sense*. *The ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of a state. It directly affects its welfare and safety.*" (*Mott v. Cline, supra*, at 447.) (Italics added.)

C. The Ownership of Land.

There is something very real, something very fundamental in the relationship between loyalty to country and ownership of its soil. Devotion and patriotism to country seem to be affected in some indefinable way by bonds of birth in or sworn allegiance to that country in which possession of its land is enjoyed and protected. It is not necessary to explore the realms of political philosophy to discover a cause—it is one of the human instincts. While

bonds of loyalty may not be affected by the ownership of personal property—for one might own a chattel which he could carry with him as he roamed every country of the world without obligation or loyalty to the place in which he momentarily found himself—ownership of land appears infinitely more precious and indescribably different, something inherently related to loyalty and allegiance. Recognizing this, the California Supreme Court held that "The ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of a state." (*Mott v. Cline, supra*, at 447.)

It is not improbable that it was with this thought in mind that the desire of the Empire of Japan was that the right to own land be not conferred in the treaty between the two nations in effect at the time the Alien Property Initiative Act of 1920 was adopted—which incorporated all treaty rights, *then existing*, between this and other nations. (Alien Land Law, sec. 2.) This treaty, the Treaty of Commerce and Navigation of 1911 (37 Stat. 1504-1509), was construed by the United States Supreme Court in *Terrace v. Thompson*, 263 U. S. 197, 223; 44 Sup. Ct. 15, 21, with reference to conferred rights of land ownership as follows:

"The letter of Secretary of State Bryan to Viscount Chinda, July 16, 1913, shows that, *in accordance with the desire of Japan, the right to own land was not conferred.*" (Italics added.)

References by appellants to motives activating the adoption of the alien land law in California are, therefore, without persuasive effect, as it was at the instance of Japan that the treaty provisions were not extended to the reservation of the right to own land.

As pointed out in *Terrace v. Thompson, supra* (at p. 221) the thing forbidden is not the opportunity to earn a living in common occupations of the community, but the privilege of owning and controlling land.

D. Violations of the Alien Land Law and Their Effect.

That the California Alien Land Law has been studiously and defiantly evaded and violated through various adroit artifices of circumvention is a matter of common knowledge.

We quote two significant statements from the so-called Tolan Report:¹

“(1) The law was nullified by special unwritten arrangements, excessive wages, gifts, Japanese-controlled corporations and guardianships” (at p. 86).

“(2) That the Japanese by various devices were able to circumvent the provisions of the land law is generally acknowledged. Some avoided conflict with the ownership provisions by purchasing agricultural land in the names of their minor children born on American soil, for whom they acted as guardians, or by paying American citizens to purchase land and hold it for them or their children. Another fairly common practice was to form dummy corporations in which perhaps 51 percent of the stock was held by an American, usually the corporation’s attorney, who in reality held only a ‘naked trust’ without any voice in the management of the corporation’s affairs” (at p. 78).

¹Tolan Congressional Committee (Report of Select Committee Investigating National Defense Migration, House of Representatives, 77th Cong., 2nd Session, House Report No. 2124).

The following quotation from Mr. Carey McWilliams' book "Prejudice" (Little, Brown & Company, 1944), a text repeatedly referred to in petitioners' brief, is also eloquent on this subject:

"The act (California Alien Land Law) was easily evaded: title to farm land was placed in the names of Hawaiian or American-born Japanese—verbal agreements were entered into—'gentlemen's agreements'—that ran counter to the terms of written documents; Japanese were employed as 'managers' instead of as 'tenants.' By these and other devices, and with the connivance of law-enforcement officials, the act was blithely ignored" (at p. 65).

That these practices, acknowledged as having been frequently engaged in, engendered a deplorable lack of respect for law has been all too obvious.¹ Such ignoring of the provisions of the alien land law could result in a complete break-down of the dignity of the mandate of both the legislature and the electors of the state. With such an abandonment of respect for the law, how can

¹The following statement of facts from the urgency clause accompanying Chapter 1129 of the statutes enacted by the Fifty-sixth Legislature illustrates what has been said as to the lack of respect for law resulting from infractions:

"A large number of violations of the Alien Land Laws of California have taken place, over a considerable period of time, as a result of which substantial areas of land have been illegally acquired and are now being held by aliens ineligible to citizenship. This not only deprives citizens and those eligible to become such of the right to acquire and enjoy the use of these lands but it engenders a lack of respect for the laws of this State and their enforcement, both on the part of ineligible aliens and citizens. There exists a feeling of uncertainty and distrust as to the lawful ownership of land in many localities of the State, with resultant growing resentment and threatened unrest." (Stats. 1945, p. 2168.)

good citizenship be expected—particularly from those of alien birth and allegiance whose concepts of philosophy and government were foreign to ours and to whom we owe the duty and responsibility of inculcating a respect for our law? Certainly the placing of a premium upon its bold and defiant infraction cannot stimulate or engender such respect. That some law-enforcement officials were remiss in the performance of their duties, with the result that certain writers have stated that violations were condoned and even encouraged, cannot be pointed to with pride, nor can it justify the defiant violations which took place.

E. The Decisions and the Canons of Construction.

The constitutionality of the Alien Land Law has been repeatedly sustained in the past by the United States Supreme Court and by the California Supreme Court without dissent by any of the justices thereof. The reasoning heretofore used by the courts is hereby adopted as part of the argument in favor of the constitutionality of the Act, without unnecessarily burdening this record with lengthy quotations. The cases upon which particular reliance is placed are: *Terrace v. Thompson*, 263 U. S. 197; and, also, the opinion of the Circuit Court below in the same case, 274 Fed. 841; *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313; *Frick v. Webb*, 263 U. S. 326; *Cockrill v. California*, 268 U. S. 258; *Morrison v. California*, 288 U. S. 591; *Morrison v. California*, 291 U. S. 82; *In re Akado*, 188 Cal. 739; *In re Okahara*, 191 Cal. 353; *Porterfield v. Webb*, 195 Cal. 71; *Mott v. Cline*, 200 Cal. 434; *People v. Osaki*, 209 Cal. 169.

If there be any vitality in the doctrine that legislation shall not be lightly overthrown or set aside as unconstitutional unless its invalidity is established beyond reasonable doubt, then the reasoning heretofore applied by the courts in sustaining the legislation must be recognized as having been acceptable to and supported by honest men of reasonable judgment.

The petitioners in urging the unconstitutionality of the Alien Land Law have asked this Court to depart from certain of the accepted canons of constitutional construction, and particularly from canons which it was formerly thought were especially cherished by liberal thinkers. Certain of these canons have been summarized at 11 Am. Jur. 718, with citations of authority, as follows:

"The courts invariably give the most careful consideration to questions involving the interpretation and application of the Constitution and approach constitutional questions with great deliberation, exercising their power in this respect with the greatest possible caution and even reluctance; and they should never declare a statute void, unless its invalidity is, in their judgment, beyond reasonable doubt."

And, at page 719:

"In all instances where the court exercises its power to invalidate, the conflict of the statute with the Constitution must be irreconcilable, because it is only a decent respect to the wisdom, the integrity, and the patriotism of the legislative body, by which any law is passed, to presume in favor of its validity until the contrary is shown beyond reasonable doubt."

Among the numerous cases in which these principles have been enunciated are:

Home Telephone and Telegraph Co. v. Los Angeles, 211 U. S. 265, 53 L. Ed. 176;

Everard's Breweries v. Ralph Day, 265 U. S. 545, 68 L. Ed. 1174;

Mugler v. State of Kansas, 123 U. S. 623, 31 L. Ed. 205;

Legal Tender Cases, 12 Wall. 451, 20 L. Ed. 287;

Fletcher v. Peck (10 U. S.), 6 Cranch 87, 3 L. Ed. 162;

Miller v. Board of Public Works, 195 Cal. 577;

People v. Hayne, 83 Cal. 111.

At 11 Am. Jur. 789, the same principle is stated:

"The opinion has been expressed that the conviction required to overcome the presumption in favor of a statute must be clear and strong and that a law should never be lightly overthrown or set aside as unconstitutional. The validity of a law ought not to be questioned unless it is so obviously repugnant to the Constitution that when pointed out by the judges, all men of sense and reflection in the community may perceive the repugnancy."

Or, as stated by Justice Cardozo, "The Nature of the Judicial Process (1921), pp. 88-9:

"In judging the validity of statutes, the thing that counts is not what I believe to be right. It is what I may reasonably believe that some other man of normal intellect and conscience might reasonably look upon as right."

In urging upon this Court that there is a rational basis for the legislation, respondent summarizes its argument

in favor of the rationality of the Alien Land Law as follows:

The courts have heretofore consistently sustained the legislation and have advanced reasons in support of the legislation, which grounds cannot be said to be clearly, manifestly or palpably unreasonable or without any foundation in fact or in law.

The Legislature of California in 1913, the People by initiative in 1920, the Supreme Court of California on numerous occasions unanimously, and the United States Supreme Court unanimously have sustained the legislation. If, therefore, we are to accept the canon of construction that the proper test is not whether the Court accepts the reasoning which inspired the legislation as conclusive, but, instead, whether the reasoning is such that the Court might admit the possibility that a rational mind could entertain such reasoning, the result is obvious. The fact that Mr. Justice Holmes concurred in the decisions in *Terrace v. Thompson*, *Porterfield v. Webb*, *Webb v. O'Brien* and *Frick v. Webb*, is indication, we think, that the underlying philosophy of the Act is not repugnant to a rational, enlightened but unprejudiced mind. It may be observed in passing that in the cases referred to, in which Mr. Justice Butler wrote the opinion, Mr. Justice Sutherland took no part in the consideration or decision of the case, Mr. Justice McReynolds and Mr. Justice Brandeis were of the opinion that there was no justiciable question involved and that the cases should have been dismissed on that ground, and the other Justices, Holmes, Chief Justice Taft, Sanford, Vandeenter and McKenna concurred.

From this point we address ourselves to the contentions advanced by the petitioners, in the order in which they are presented.

I.

**The Alien Land Law Does Not Deprive Fred Oyama,
the Citizen Son, of the Equal Protection of the
Laws or of the Privileges and Immunities of a
Citizen.**

It is contended by petitioners (Br. for Pet. pp. 11-23) that the citizen son, Fred Oyama, is deprived of his rights as a citizen because the Alien Land Law offends the equal protection and privileges and immunities clauses of Section 1 of the Fourteenth Amendment. The claim is that, because his father is an ineligible alien, he is discriminated against.

It should be made clear at the outset that there is no dispute whatever as to the right of an American born child of an ineligible alien parent to acquire and hold real property in California. *All persons* who are citizens, whether their forbears have been citizens of this nation since its inception or whether none of them have ever enjoyed that privilege, have the right to acquire and own land. This right is even extended specifically by the Alien Land Law to those who are *eligible* to become citizens. (Section 1.) This right of the citizen child is upheld in clear and positive language in *Estate of Yano*, 188 Cal. 645, and *People v. Fujita*, 215 Cal. 166. The issue in the instant case is not the right of the citizen son to own land; it is the *bona fides* of the transaction of the father whom the state alleged attempted to acquire the land as his own by means of the subterfuge resorted to.

That the courts of California are vigilant in upholding a valid, *bona fide* gift to citizen children by ineligible alien parents is evidenced in *People v. Fujita, supra*. In that case evidence of the *bona fide* intent of the father was

introduced and both the trial court and the Supreme Court held that no violation had taken place.

Here the trial court found [R. 58] and the Supreme Court affirmed the finding [R. 117] that what was involved was a fraudulent attempt to circumvent the escheat provisions of the Alien Land Law (Sec. 9). Said the Court below:

“The trial court’s findings in regard to the violation of the statute are fully supported by the evidence. The inferences to be drawn from the evidence that the real property was conveyed to the son, thereby putting it beyond the power of the father to deal with the property directly, the father’s failure to file the reports required of a guardian, the unexplained failure of the father, or any one of the defendants, to offer himself as a witness, and the presumption created by section 9 of the Alien Land Law, are ample in this regard. Indeed, this evidence convincingly points to the conclusion that the minor son had no interest in the property, his name being used only as a subterfuge for the purpose of evading the Alien Land Law.” [R. 117.]

That the findings of a trial court on an issue of fact will not be disturbed if supported by any substantial evidence is well established.

3 Am. Jur., Sec. 883, Appeal and Error;

5 Cal. Jur., Sec. 1642, Appeal and Error; and cases cited.

What the contention of the appellants amounts to is that the State must sit idly by and remain helpless until a deed is recorded naming an ineligible alien as grantee and that meanwhile the true owner, or rather the one who sought (without effect because of his legal inca-

pacity) to acquire the property, the one whose money paid for the property, the one inhibited by the statute, may possess, enjoy, use, cultivate, and occupy and have the beneficial use of the property, as was done here after the fraudulent transactions took place. The plain intent of the statute will support no such attenuated contention.

The argument advanced by petitioners at page 12 of their brief to the effect that Fred Oyama is, under the Alien Land Law, something less than a full American citizen, and is therefore denied the equal protection of the laws is untenable for the reason that the Alien Land Law applies the same presumption to all persons taking property in their own name when that property is paid for by an ineligible alien.

The provision of the Alien Land Law is this:

“Sec. 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the State and the interest thereby conveyed or sought to be conveyed shall escheat to the State as of the date of such transfer, if the property interest involved is of such a character that an alien mentioned in Section 2 hereof is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.”

“A *prima facie* presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:

“(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof.”

It is elementary that the guaranty of "equal protection of the laws" is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.

St. John v. New York, 201 U. S. 633, 50 L. Ed. 896, 26 Sup. Ct. 554, 5 Ann. Cas. 909;

Louisville & N. R. Co. v. Melton, 218 U. S. 36, 54 L. Ed. 921, 30 Sup. Ct. 676, 47 L. R. A. (N. S.) 84;

Mobile etc. R. Co. v. Turnipseed, 219 U. S. 35, 55 L. Ed. 78, 31 Sup. Ct. 136, 32 L. R. A. (N. S.) 226, Ann. Cas. 1912A 463;

Mondon v. N. Y., N. H. & H. R. R. Co., 223 U. S. 1, 56 L. Ed. 327, 32 Sup. Ct. 169, 38 L. R. A. (N. S.) 44.

The reasonableness of the discrimination against persons receiving title to land paid for by ineligible aliens will be elaborated at a later point in this brief. That the Alien Land Law would cause the same presumption to arise if Kajiro Oyama had caused title to be placed in Fred Johnson's name is perfectly clear from the wording of Section 9 quoted *supra*, and is admitted by the appellants at page 23 of their brief. Though such a situation is labeled unrealistic, petitioners have cited *Cockrill v. California*, 268 U. S. 258, a case in which just such a situation occurred. (Br. for Pet. p. 20.) Again, at the risk of undue repetition, it is well established that the "equal protection" clause does not prohibit legislation which is limited either in the object to which it is directed or by the scope within which it is to operate. It

merely requires that *all persons subject to such legislation* shall be treated alike, under like circumstances and conditions, both in privileges conferred and liabilities imposed.

Hayes v. Missouri, 120 U. S. 68, 30 L. Ed. 578,
7 Sup. Ct. 350;

Truax v. Corrigan, 257 U. S. 312, 66 L. Ed. 254,
42 Sup. Ct. 124;

Barbier v. Connelly, 113 U. S. 27, 28 L. Ed. 923,
5 Sup. Ct. 359.

Since the hypothetical Mr. Johnson is not subject to the Alien Land Law until he receives title to property paid for by an ineligible alien it is submitted that his inter-family property transactions are of no interest to this Court.

In answer to petitioners' contention that the proof expected of a person taking title to land paid for by an ineligible alien is well-nigh impossible of attainment, such a statement completely disregards the construction placed upon Section 9 of the Alien Land Law. In *People v. Fujita*, 215 Cal. 166, at 171, it was held as to the presumption above quoted:

“But the presumption is recognized as disputable and as disappearing in the face of contrary evidence of sufficient strength to meet our rule on conflict of testimony.”

In the *Fujita* case the California Supreme Court upheld a finding of the trial court that a conveyance of real property to four citizen children of an ineligible alien constituted a *bona fide* gift and that consequently there was no basis for escheat under the Alien Land Law, even though said property was paid for by the ineligible alien.

parent. In view of the language of the California Supreme Court quoted above, it must be assumed that had the trial court in the instant case been satisfied that the evidence outweighed the presumption, the judgment would have been for the defendants and such judgment would have been affirmed by the California Supreme Court. The *Fujita* case is distinguishable from the instant one because of the finding by the trial court in that case that the gift was a *bona fide* one.

Although it is improbable that this Court will reweigh the evidence supporting the finding of the trial court in the instant case, petitioners' specific criticisms of the evidence are readily answered. The first item of evidence referred to by petitioners is set forth on page 13 of their brief:

"...the evidence that the real property was conveyed to the son, thereby putting it beyond the power of the father to deal with the property directly,"

The basis for regarding this as "persuasive evidence" is clearly set forth in the statement of the trial court at the conclusion of the trial [R. 101]:

"Now, in the absence of any evidence that the motives and conduct of a person of Japanese citizenship is any different from that of one of our own citizens, I should draw whatever inferences as to motive that there are to be drawn on the same basis and for the same reason that I should draw them if the person involved was a white American citizen. In the first place, looking at this situation with reference to the guardianship matter, it is to be noted that the guardianship proceedings were instituted at a time when the minor, Fred Oyama, was seven, I

believe—either seven or eight years of age. Now, in our ordinary dealings we just don't do that sort of thing unless there is a good reason [Fol. 181] for it. Why should I, for instance, have taken title to real property in my son's name when he was seven or eight years of age, thereby *putting it beyond my power to deal with it directly*, to deed it away, to borrow money on it and to make free disposition of it in any other way that I saw fit to do so unless there was a good strong reason why I should do that. We just don't do that sort of thing and people generally do not do that sort of thing. So, rather than to draw the inference that the property was put into the seven year old boy's name in order to provide for a college education for him, or something of that kind, I think that the more reasonable inference to draw would be that there was some other good reason for doing that very thing. (Italics applied.)

It is conceded that there are cases in which an ineligible alien father may wish to make a *bona fide* and therefore legal gift of land to his citizen child, but, it is at least as probable that an ineligible alien desiring to acquire and own land in violation of the Alien Land Law would fraudulently go through the motions of making a gift to a child while actually having no intent whatsoever of making a *bona fide* gift. Such an action being open to two reasonable constructions, the law of California, even without the aid of the presumption called for by Sec. 9 of the Alien Land Law, clearly provides that the less favorable construction be made in cases where de-

fendants refuse, as in this case, to testify as to the true nature of the transaction.

Bertelsen v. Bertelsen, 49 Cal. App. (2d) 479;

Winkie v. Turlock Irrig. Dist., 24 Cal. App. (2d) 1.

The reference to *Estate of Yano*, 188 Cal. 645, 206 Pac. 995, made at page 15 of petitioners' brief includes the word "confessedly."

"The act of petitioner, in securing conveyance of land to his daughter, while *confessedly* carried out because the laws of California did not permit him to buy it for himself," (Italics supplied.)

which word alone is sufficient to distinguish that case from the instant one.

Legal arguments may be sound when made in a case where the trial court is given the benefit of the testimony of the principals as to their intent and yet be totally irrelevant in a case such as this, where the unexplained refusal of the defendant to testify properly gives rise to the inference that they refused to testify because the truth, if made to appear, would have been adverse to them.

As to the second item of evidence discussed by petitioners at page 16 of their brief; namely, ". . . the father's failure to file the reports required of a guardian," a quotation from the record [R. 102] may be helpful. It shows that the trial judge did not give a great deal of

weight to this, and also indicates that he placed considerable emphasis on the failure of the defendants to testify.

"I note that counsel argued that we shouldn't give much, if any consideration, to the fact that the law has not been complied with in the filing of the required reports and accounts. I cannot agree with counsel about that because if good faith was present in the mind of the guardian it is more likely than not that he would have in all respects complied with the requirements of law in connection with the guardianship and his failure to do so probably adds some strength to the theory of the plaintiff in this case—not a great deal because sometimes people who are not informed as to the requirements of the law in connection with those matters simply fail to do the thing that the law requires them to do. Furthermore, . . . the father, Mr. Oyama, has not offered himself as a witness in the case, and from his unexplained failure to offer himself as a witness the Court is required, as I understand it, to draw an unfavorable inference. If I am wrong about that I, of course, wouldn't mind being told that I was wrong, but I think that inference must be drawn from his failure to testify."

It has not been denied that the fact of compliance or failure of compliance with the requirement for filing reports constitutes evidence of intent as to the *bona fides* of the purported gift. Indeed, the court below held this to be evidence [R. 117]. What is complained of is that if Fred Oyama were Fred Johnson the intent would not matter. This is true, if Fred Johnson's father is not restricted in his right to acquire or own land. If the classification be a valid one, however, the intent of the ineligible alien goes to the very essence of the transaction.

whoever the purported donee may be. The carrying out of the law's requirements where it is claimed a gift was made is at least some evidence as to the intent, and what the real transaction amounted to. Any person occupying the same relationship to the transaction as the son Fred Oyama would be subject to the same requirements of *bona fides* on the part of the purported donor. The father, Kajiro Oyama, was in this case the guardian of both the person and estate of Fred Oyama [R. 54]. He was available to testify at the trial [R. 97-98], where he could have presented any explanation available for the failure to file any of the required reports. In the absence of *bona fides* and where the transaction was but a subterfuge no title could pass. The attempted acquisition was void as to the state. Fred was not called upon to be a "guarantor of his guardian's conduct." But the acts of his father determined whether he ever received any property by the transaction.

As held by the court below:

"Property which the citizen never had he could not lose, and as the land escheated to the state instanter, he acquired nothing by the conveyance and the Alien Land Law took nothing from him." [R. 117.]

Petitioners' discussion as to the requirements for the filing of reports by a guardian under Section 4 (Br. for Pet. pp. 15, 16) can scarcely be said to amount to more than quibbling as to which section applies. The California Supreme Court [R. 111] specifically construed Section 5 of the Alien Land Law as directing the guardian to file in the office of the secretary of state and that of the county clerk annual reports describing the property and furnishing the other information and accounts required

by the section. No reports were filed. [R. 83, 84.] The question asked the county clerk as to whether any reports were filed in this instance referred to reports "by trustees, guardians and agents concerning property, or an interest therein, belonging to aliens mentioned in Section 2 of the Alien Property Initiative Act of 1920, and minor children of such." [R. 83.] Hence there was no misunderstanding as to what reports were referred to,—and there can be no question but that they were required.

As to the third item of evidence complained of by petitioners (Br. for Pet. p. 18) ". . . the unexplained failure of the father, or any one of the defendants, to offer himself as a witness, . . .", it is well established that this fact warrants an inference that if the defendants were to testify truthfully they would injure their case. The refusal of a party to appear as a witness amounts to a wilful suppression of evidence and may be given great weight by the trial court in determining the facts in issue. (*Bone v. Hayes*, 154 Cal. 759, 765; *People v. Adamson*, 27 Cal. (2d) 478, 493; *Leenders v. California Hawaiian etc. Co.*, 59 Cal. App. (2d) 752; *Bertelsen v. Bertelsen*, 49 Cal. App. (2d) 479, 493; *Winkie v. Turlock Irrigation Dist.*, 24 Cal. App. (2d) 1; and Cf. *Twining v. New Jersey*, 211 U. S. 78; 2 *Wigmore, Evidence*. (3d Ed.) 164.) There is, in fact, no other possible logical inference in view of the provisions of the Alien Land Law (Section 9) giving petitioners the right to show that a *bona fide* gift was made, thus overcoming the presumption of intend to avoid escheat, which is only a *prima facie* one. It has been pointed out earlier that the California Supreme Court held in *People v. Fujita*, 215 Cal. 166, 171, ". . . the presumption is recognized as disputable and as disappearing in the face of

contrary evidence of sufficient strength to meet our rule on conflict of testimony." Nothing is accomplished by the argument of petitioners [R. 17] that "Fred Oyama stands to lose his gift because of something that someone else has done," for it is perfectly clear that the principal issue of fact in the case was whether there ever was a *bona fide* gift to Fred Oyama. Nor were the petitioners unaware of the importance of this issue at the time of the trial. We quote Mr. Wirin's statements at the trial: "So far as we are concerned we claim, and we admit, that the central factual issue is the intent of the father" [R. 78], and, "By way of finality, we think the central situation is the good or bad faith of the transaction." [R. 80.] How then can petitioners now bottom their argument on an assumption that there was a *bona fide* gift after failing to place any of the defendants on the stand to testify as to this "central factual issue"? Nor is petitioners' statement that "the father never claimed any interest in the property" (Br. for Pet. p. 17) sufficient excuse for this refusal to submit evidence. Surely it is not contended that the father, the guardian of both the person and estate of the son, was so disinterested or so completely apathetic that it mattered not to him whether the State or his son got the land.

As to the fourth item of evidence relied upon by the trial court, ". . . the presumption created by Section 9 of the Alien Land Law" which is criticized by petitioners at page 17 *et seq.* of their brief, this Court has held that "The establishment of presumptions and of rules respecting the burden of proof is clearly within the domain of the state governments."

The limitations as to presumptions have been defined by this Court as follows:

"That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal protection of the law, it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense to the main fact thus presumed.

"If a legislative provision not unreasonable in itself, prescribing a rule of evidence, in either criminal or civil cases, does not shut out from the party affected a reasonable opportunity to submit to the jury in his defense all of the facts bearing upon the issue, there is no ground for holding that due process of law has been denied him."

Mobile, J. & K. C. R. Co. v. Turnipseed, 219 U. S. 35, at 43.

It is perfectly clear that there is, in the instant case, a rational connection between the facts established, *i. e.*, that the land was paid for by an ineligible alien and the title taken in the name of a citizen, and the presumption raised by the Alien Land Law that the transaction was with intent "to prevent, evade or avoid escheat." (Sec. 9.) There are only two explanations for such a transaction which appear rational and probable. These are, first, that the transaction was a subterfuge, employed to conceal the attempt of the ineligible alien to acquire land for his own

beneficial use, in violation of the Act. This, of course, was the finding of fact made by the trial court and upheld by the California Supreme Court.

"The trial court's findings in regard to the violation of the statute are fully supported by the evidence.

Indeed, this evidence convincingly points to the conclusion that the minor son had no interest in the property, his name being used only as a subterfuge for the purpose of evading the Alien Land Law."

[R. 117, 118.]

The other possible explanation of the transaction is that of a *bona fide* gift to the son. This was not established by the petitioners—in fact, there was scarcely any attempt made.

If, as stated by this Court in the *Turnipseed* case, it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate, how can it possibly be said that the presumption of one rather than the other of two possible explanations of the acts of the ineligible alien is irrational or so unreasonable as to be a purely arbitrary mandate?

Petitioners' argument (Br. for Pet. pp. 17, 18) that under the presumption provided for by Section 9 "Fred Oyama could never receive a gift of land from his father" plainly stems from their failure to interpret Section 9 in its entirety. Section 9 provides for escheat "if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein." (Italics supplied.) Section 2 of the Alien Land Law makes it clear that escheat is "provided for herein" only if ineligible aliens seek to

"acquire, possess, enjoy, use, cultivate, occupy and transfer real property, or any interest therein, in this state . . .", — not when they seek to make a *bona fide* gift. In addition to the clear import of the law's wording, the California Supreme Court in the case cited extensively by petitioners (*Estate of Yano, supra*), has interpreted the Alien Land Law as clearly permitting a citizen child to be the donee of land paid for by an ineligible alien.

"The act of petitioner in securing conveyances of land to his daughter, while confessedly carried out because the laws of California did not permit him to buy it for himself, was in no sense unlawful since the daughter is a citizen of the United States and entitled to acquire and own real estate."

Estate of Yano, 188 Cal. 645, 650.

See, also,

People v. Fujita, 215 Cal. 166.

That the presumption in question is not artificial or unreasonable is supported by the close analogy in the California law to cases involving transfers which are deemed fraudulent as to creditors. In the parallel case where Fred Johnson's father makes a transfer to Fred Johnson, a minor son, if we add the further fact that Fred Johnson's father is at the time of transfer indebted and the transfer makes him insolvent, we immediately find that Fred Johnson may be deprived of the attempted gift by action of his father's creditors and that in some cases the presumption of his father's fraud and bad faith would

be conclusive,—and in every case the question of his father's bad faith will be one of fact for the court. If we add the further circumstance that his father's lawyer keeps Fred's father out of court so that the most direct evidence concerning the father's bad faith, namely, his own testimony, is not made available for the enlightenment of the trial court, it is submitted that the inference of fraud becomes overwhelming, not altogether as a matter of statutory presumption but largely as a matter of inescapable logical inference.

The California statutes bearing on transfers in fraud of creditors are Civil Code sections 3439 through 3440.5. Sections 3439 through 3439.12 embrace the Uniform Fraudulent Conveyance Act, which has been adopted by numerous states. Section 3440 is a bulk sales law which contains a conclusive presumption that transfers of retail stocks other than in the ordinary course of trade and without the recording and publishing of notice are fraudulent.

The California cases are full of instances where transfers from husband to wife or parent to child have been held to be fraudulent. *Swartz v. Haslett*, 8 Cal. 118; *Lander v. Beers*, 48 Cal. 546; *Evans v. Sparks*, 170 Cal. 532; *Bufkin v. Cline*, 180 Cal. 381; *Union Central Life Ins. Co. v. Flicker*, 101 F. (2d) 857.

It is submitted that the Uniform Fraudulent Conveyance Act and the cases decided thereunder establish that it is not constitutionally improper to support a public policy, valid for other purposes, by a statutory presumption which makes that policy workable and effective.

Petitioners' attempt (Br. for Pet. pp. 21, 22) to distinguish *Cockrill v. California*, 268 U. S. 258, in which this Court upheld the validity of this presumption, not only lacks persuasiveness, but demonstrates that the use of the presumption under circumstances such as those in the instant case, is even more valid. There the title to the land paid for by the ineligible alien was taken in the name of a citizen not related to the alien—a "stranger" to use the expression of petitioners. In the light of ordinary experience it seems clear that a presumption held to be reasonable and valid in such a case must with greater reason be held valid where the title is taken in the name of a citizen child of the ineligible alien, for the chances of successfully defying detection of the subterfuge and violation would be far greater in the latter instance than in one where the name of a stranger, over whom the alien might have little or no control, was used. It would seem, therefore, that the language of this Court in the *Cockrill* case (at 261, 262) is most apposite here:

"It is not; and could not reasonably be suggested that the statute is repugnant to the due process clause. It does not operate to preclude any defense. The inference that payment of the purchase price by one from whom the privilege of acquisition is withheld, and the taking of the land in the name of one of another class, are for the purpose of getting the control of the land for the ineligible alien is not fanciful, arbitrary, or unreasonable. There is a rational connection between the facts and the intent authorized to be inferred from them."

"The statute is not repugnant to the equal protection clause. The rule of evidence applies equally and without discrimination to all persons—to citizens and eligible aliens as well as to the ineligible.

Plaintiffs in error maintain that invalidity results from the fact that, where payment of the purchase price is made by an ineligible alien, the law creates a presumption of a purpose to prevent, evade, or avoid escheat, while no such presumption arises where such payment is made by a citizen or eligible alien. But there are reasonable grounds for the distinction. Conveyances to ineligible Japanese are void as to the state and the lands conveyed escheat. *Payment by such aliens for agricultural lands taken in the names of persons not of that class reasonably may be given a significance as evidence of intent to avoid escheat not attributable to like acts of persons who have the privilege of owning such lands.* The equal protection clause does not require absolute uniformity, or prohibit every distinction in the laws of the state between ineligible aliens and other persons within its jurisdiction. The state has a wide discretion and may classify persons on bases that are reasonable and germane. *Truax v. Corrigan*, 257 U. S. 312, 337. (Italics supplied.)

We think no more complete answer than the foregoing quotation from the decision of this Court could be made to the so-called Fred Oyama-Fred Johnson argument advanced by the petitioners.

II.

The Alien Land Law Is a Constitutional Exercise of Police Power.

Following their argument that the Alien Land Law as it affects Fred Oyama, the citizen son, is unconstitutional, petitioners make the contention that the law is unconstitutional on its face. (Br. for Pet. pp. 23-29, incl.) It is their claim (1) that the law is race legislation and (2) that it is, in purpose and administration, an anti-Japanese law.

It is to be borne in mind throughout that the classification of the California Alien Land Law is that of eligibility to citizenship. There is nowhere in the statute a single reference to race, color, creed or place of birth or allegiance. Its provisions are simple and direct—all aliens having the right to become citizens may own and control land in California; other aliens may not. (Sects. 1, 2, Alien Land Law.) This Court has stated in clear and positive terms that:

"Two classes of aliens inevitably result from the Naturalization Laws,—those who may and those who may not become citizens. The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership."

Terrace v. Thompson, supra, at p. 220.

And in the same decision the assurance is given, also at page 220:

" . . . it is not to be supposed that its acts (those of Congress) defining eligibility are arbitrary or unsupported by reasonable consideration of public policy.

"The state properly may assume that the considerations upon which Congress made such classification are substantial and reasonable."

These are the plain and positive assurances upon which the state has relied. They invest the findings and determinations made in the enactment of these laws with a dignity and integrity which are not to be challenged with charges of "racist" motives. They import to the definition of the right to become a citizen something far more searching and real than petty prejudices addressed to color of skin, form of worship or place of nativity. We are assured that the considerations are matters of real substance, bearing a sound relationship to basic standards of qualification for good citizenship in this nation.

It is a fact that since the original Naturalization Act of 1790 the designation of those eligible to become citizens has been successively broadened. It may one day be so broadened as to include all peoples of the earth. On the other hand, critical exigencies of the future may, within the realm of possibility, indicate and bring about a narrowing of this privilege by our nation—perhaps from considerations not heretofore encountered. In either event we are assured that the rule laid down will have "substantial and reasonable considerations" as its basis, which are not "arbitrary or unsupported by reasonable consideration of public policy." They will bear a distinct relationship to qualifications of loyalty, devotion and the capacity and desire to serve the welfare and success of our nation and its form of government.

This is the classification made by California in its statute. It embodies the elements regarded by the State as sound and conducive to its welfare and safety. What

could constitute a more sound or basic classification? To whom could or should a state look for its determination other than that body invested by the Constitution with the power to define it? Is this Court to now say that findings and determinations made by the Congress are arbitrary, capricious or the result of stupid prejudice based upon racism?

1. In the instant case petitioners are interested in the Alien Land Law as it affects the Japanese people. While at the time of its enactment those ineligible to citizenship included all except free white persons and persons of African descent and while even with the subsequent narrowing of the ineligible class a substantial portion of the world's population still remains ineligible, their claim is that this law is "purely racist—anti-Japanese—legislation."

As for "purely racist" motives, by which term petitioners seek to characterize the California law, we say, as we have said before, that we have neither the desire nor do we believe we are under any necessity to excuse or defend an attitude or purpose such as that sought to be ascribed by petitioners and made the focal point of their contention. It must have been made apparent to petitioners by this time that "racism," with the odious implications which that term conveys, is not nor can it be claimed as a factor motivating enactment of this law—regardless of what petitioners would have us believe. In the State's Brief in Opposition to Petition for Writ of Certiorari (p. 12) we made this statement:

"Race prejudice and race hatreds, as such, are ugly things."

That statement is here reaffirmed, and it may be added that these things are stupid as well. We think there is no

place in the concept of our form of government for prejudices or hatreds of the kind which petitioners would impute to the electors of California.

What we are considering here is a classification of those given the right to own land, based upon eligibility to become a citizen of this nation, a standard than which we can conceive nothing more inherently related to loyal allegiance and desire to work for the success and welfare of the State.

Petitioners allege that both in its genesis and in its subsequent history the statute was aimed at the Japanese people. The classification embraced many Orientals. It is true that the Japanese came in greater numbers following the turn of the century. Chinese have not been admitted to immigration in any substantial numbers for a long period (compare the Chinese Exclusion Acts of 1880, 1882, 1888, and 1892). Hindus, Malayans, Indonesians, Polynesians, Burmese, and various other Asiatic peoples never have been present in numbers anywhere near approaching those of the Japanese immigrants. In spite of the so-called "Gentlemen's Agreement" entered into in 1908, Japanese immigration was not materially reduced until the Immigration Act of 1924. Accordingly, although the other peoples above-mentioned constituted a part of the classification made in the Alien Land Law, and were, of course, equally subject to its rule as to land ownership, it was natural and it may be agreed that the large-scale immigration of the Japanese people and what the Tolan Report¹ refers to as "Japan's plan of peaceful infiltration", concerning which there was much discussion and as to

¹Tolan Report, *supra*, p. 83.

which by far the greater number of references are made in the writings upon this subject, occupied the center of the stage.

That the Oriental peoples were quite firmly ensconced in 1922, through their occupancies of substantial areas in the richest agricultural lands of the State, is shown by maps depicted in the publication "*California and the Oriental*, Report of State Board of Control of California" (California State Printing Office, 1922). Copies of these maps showing such occupancies, together with a relief map of the State of California and an accompanying legend are contained in Appendix "B" to this brief (p. 7).

Viewed in the light of these conditions, we think it is not difficult to understand the concern of the California citizenry occasioned by the expanding entrenchment throughout the state of Oriental peoples who could not become citizens. That there were more of Japanese than of any other peoples affects the subject only as of degree. The legislation set up the restraint against *all* who could not be bound by the oath of allegiance.

In the instant case petitioners are interested in the statute as it affects the Japanese peoples. While it has not been our desire nor do we deem it necessary to single out any one of the peoples among those falling within the classification—that circumstances and factors existed with relation to those here involved which may reasonably have been considered in the adoption of this law is demonstrated in the "*Brief of the United States*" in *Hirabayashi v. United States*, 312 U. S. 52. The portion of the Government's brief referred to is printed as Appendix "C", *infra* (p. 9).

The opinion of Chief Justice Stone in *Hirabayashi v. U. S.*, *supra*, p. 96 *et seq.*, sets forth reasons, other than so-called "racist's ones, which we believe it will be conceded furnish a rational basis for the Alien Land Law.

2. The question of discriminatory enforcement.

Petitioners (Br. for Pet. pp. 29-32) make the charge that the policy of administration was to enforce the Alien Land Law only against the Japanese. As stated in the State's Brief in Opposition (p. 18) this assertion might be answered by the statement that the Japanese constituted the offenders. Congress has admitted almost no Chinese since the Chinese Exclusion Law of 1882. Filipinos have never been forbidden to own land in California. (*Alfara v. Fross*, 26 Cal. (2d) 358.) Hindus have in fact violated the Alien Land Law, although not so persistently as have the Japanese, and have been prosecuted for violations when violations were discovered. In the table set forth as Appendix B of petitioners' brief the statistical data as to escheat proceedings against Hindus is in error. No such proceedings are shown in this table since 1924 and it is stated (Br. for Pet. p. 29) that every one of the escheat cases filed since Pearl Harbor was filed against Japanese. This statement is incorrect. There are to our knowledge at least three escheat proceedings against Hindu defendants now pending trial in one county alone. These, of which we have a record, are *People v. Sigera*, Fresno County Superior Court No. 74085; *People v. Sigera*, Fresno County Superior Court No. 74088; *People v. Singh*, Fresno County Superior Court No. 74624. Other cases in which Hindus are believed to have violated the Alien Land Law are to our knowledge under investigation in several other counties. Whether escheat proceedings are

filed in every instance depends entirely upon the facts disclosed in the particular case.

Bare assertions as to numbers of cases or nationality of defendants, made without any knowledge of the facts involved, cannot furnish criteria for either an understanding of or any fair inference as to the circumstances encountered or the action taken in each case. We have yet to have any instances pointed out in which the administration of the statute has been discriminatory. Where violations of the law have been discovered, proceedings have been commenced—as directed by its provisions. We think that no apology is required for the performance of sworn official duty.

That in the past there have been periods when enforcement of the law was lax, and even non-existent, and that this may be attributable to a lack of response to duty on the part of public officers cannot be said to affect in any wise the constitutionality of the statute.

And that, as to offenders among the Japanese, there was during the late thirties and prior to Pearl Harbor no enforcement by the filing of escheat proceedings, said to be in deference to what was referred to as the National policy to refrain from any acts which might be regarded as unfriendly to the Japanese people, can scarcely be made the subject of criticism by petitioners,—nor is it any indication that the law applied to Japanese alone. (Br. for Pet. p. 30.)

In short, petitioners' argument as to discriminatory administration reduces itself to the complaint that the escheat proceedings filed were predominately against offenders among the Japanese. They do not claim that such proceedings were not based upon adequate statutory grounds.

Their objection is that there were not as many violations discovered among other ineligible aliens justifying the filing of escheat proceedings. The answer is that this question is not the subject of mathematical comparisons. The law set up the classification of eligibility to citizenship, and the relative numbers of the different members of that class violating the law are not determinative as to whether it is discriminatory.

3. Following their argument on the claim of discriminatory administration petitioners make the contention that the Alien Land Law, "as an anti-Japanese law," violates the Fourteenth Amendment: (Br. for Pet. pp. 32-39.) Here again, in the face of what this Court has held to be a valid classification, they state that "one small group of aliens—the Japanese—is singled out and forbidden to own land." In addition they complain that by the abrogation in 1940 of the Treaty of Commerce and Navigation of 1911 between Japan and the United States (37 Stat. 1504) the right therein reserved "to lease land for residential and commercial purposes" and to own houses, warehouses, manufactures and shops was destroyed. In construing the effect of the abrogation of the treaty the Attorney General of California recently held (August 25, 1947) (Op. Cal. Atty. Gen., Vol. 10, Number 4, p. 90) that, inasmuch as the Alien Land Law (Sec. 2) incorporated therein and made a part thereof the provisions of any treaty existing at the time of its enactment, the subsequent abrogation of the treaty did not affect these rights.

In claiming a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment petitioners (Br. for Pet. p. 35) state the general rule as to legislative classification, citing *Atchison, T. & S. F. R. R. v. Mathews*,

174 U. S. 96; *Southern Ry. v. Greene*, 216 U. S. 400; *Frost v. Corp. Comm.*, 278 U. S. 515; *Smith v. Cahoon*, 283 U. S. 553; *Old Dearborn Co. v. Seagram Corp.*, 299 U. S. 183. Conceding the correctness of the general rule stated, we invite attention to a recent decision bearing a close relation to the subject here. In *Asbury Hospital v. Cass County, N. D.*, 326 U. S. 207, this Court held, at p. 214:

"The legislature is free to make classifications in the application of a statute which are relevant to the legislative purpose. The ultimate test of validity is not whether the classes differ but whether the differences between them are pertinent to the subject with respect to which the classification is made. *Metropolitan Ins. Casualty Company v. Brownell*, 294 U. S. 580, 583, 55 S. Ct. 538, 540, 79 L. Ed. 1070, and cases cited."

And at page 215:

"Statutory discrimination between classes which are in fact different must be presumed to be relevant to a permissible legislative purpose, and will not be deemed to be a denial of equal protection if any state of facts could be conceived which would support it. *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, 357, 36 S. Ct. 370, 374, 60 L. Ed. 679, L. R. A. 1917A, 421, Ann. Cas. 1917B, 455; *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495, 509, 57 S. Ct. 868, 872, 81 L. Ed. 1245, 109 A. L. R. 1327, and cases cited."

Petitioners make the mistake of relying, as authority for their statement that the usual presumptions in favor of legislative classification do not apply here, upon *Thomas*

v. Collins, 323 U. S. 516. In that case it was pointed out by this Court that the "fundamental liberties" were the freedoms of speech, press, assembly and worship guaranteed by the First Amendment. We have yet to find any authorities holding the right to own land to be included in these liberties.

The cases cited by petitioners (Br. for Pet. p. 36) are distinguishable from the instant case in that the Alien Land Law on its face and in its administration is a clearly constitutional exercise of the State's police power, whereas the cases cited by petitioner do not meet this test. *In re Ah Chong*, 2 Fed. 733 (C. C. D. Calif. 1880) involved a statute which prohibited fishing by "aliens incapable of becoming electors of this state." Since it was obvious on the face of the law that no reasonable grounds existed for making the distinction called for by the law, it was properly held to be unconstitutional. The same conclusion as to a classification based on eligibility to citizenship with regard to ownership of land cannot be reached.

Yu Cong Eng v. Trinidad, 271 U. S. 500, cited by petitioners (Br. for Pet p. 36) involved a law regulating merchants, a "common occupation." This Court has recognized that there is a valid distinction between the ownership of land and the regulation of "common occupations." In *Terrace v. Thompson*, 263 U. S. 197, it was held (at p. 221):

"In the case before us, the thing forbidden is very different. It is not an opportunity to earn a living in common occupations of the community, but it is the privilege of owning or controlling agricultural land within the state."

Yick Wo v. Hopkins, 118 U. S.: 356, is clearly distinguishable from the instant case. In that case the fatal defect in the law was that it vested in municipal authorities an absolute discretion to grant or withhold laundry licenses with practically no regard for any fixed standards whatsoever. In the language of Mr. Justice Mathews:

"The power given to them [the board of supervisors which had the power to grant or deny licenses] is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is *purely arbitrary*, and acknowledges neither guidance nor restraint." (Italics supplied.)

Yick Wo v. Hopkins, 118 U. S.: 366.

Secondly, even were it to be conceded that all of the recent cases in which the Alien Land Law has been enforced have involved Japanese aliens (which is not true), there is absolutely no parallel between such facts and the situation that led this Court to hold that the administration of the ordinance involved in the *Yick Wo* case violated the commands of the Fourteenth Amendment. The facts in the *Yick Wo* case make this entirely clear. Of some 320 laundries in San Francisco, 310 were located in frame buildings. Of the 310, 240 were owned and run by subjects of China. With reference to the inability of the Chinese to obtain licenses to operate, the Court said:

"And while this consent of the supervisors is withheld from them and from two hundred others who have also petitioned, all of whom happen to be Chinese subjects, eighty others, not Chinese subjects,

are permitted to carry on the same business under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified."

Yick Wo v. Hopkins, supra, at 374.

Hill v. Texas, 316 U. S. 400, cited by petitioners, is even more distinguishable from the present case than the others, since what was there involved was the inhibition of the Fourteenth Amendment as applied to racial discrimination in the selection of a grand jury, there being no statute whatsoever which warranted such a classification. There is, under the Alien Land Law, a reasonable classification of persons ineligible to citizenship. *Hill v. Texas* is not in point. That the quotation from *Holden v. Hardy*, 169 U. S. 366, 398, relied upon by petitioners (p. 37) sheds no light on this case is evident from the statement and citations contained in the sentence which immediately follows the quotation abstracted by petitioners. That sentence is:

"The distinction between these two different classes of enactments cannot be better stated than by a comparison of the views of this court found in the opinions in *Barbier v. Connolly*, 113 U. S. 27, and *Soon Hing v. Crowley*, 113 U. S. 703, with those later expressed in *Yick Wo v. Hopkins*, 118 U. S. 356."

The *Barbier* and *Soon Hing* cases merely held that a municipal ordinance prohibiting laundry work in public laundries during the night hours was a valid and Constitutional exercise of police powers. The *Yick Wo* case has been shown to be clearly distinguishable, as an investiture of totally unrestrained power.

As against the continuously repeated assertions of petitions as to "racist" and "anti-Japanese" discrimination we point to the decisions of this Court which have given complete judicial sanction to the classification here challenged.

Before passing to petitioners' next point we refer, as evidence of a spirit of fairness and desire to afford a means of clarifying uncertainties, to a California statute in which the state permits herself to be sued by any person claiming an interest in the real property in question to determine whether an escheat has occurred under the provisions of the Alien Land Law. (Statutes 1945, Ch. 1363.) This Act is printed as Appendix "D", *infra*, p. 20. All that is required in such a suit, which is in the nature of a quiet title action, is that the complaint describe the property and specify the instrument or instruments in the chain of title which gave rise to the possibility of such escheat. While no reference to the printed record is available, the files of the Attorney General's office show that, in over two score of such cases filed, only one case has been contested thus far. After due investigation, if it is found that under facts or the law no escheat has occurred a disclaimer is filed, as authorized by the Act.

III.

The Prior Decisions of This Court Are Sound and
Should Neither Be Overruled Nor Declared to Be
No Longer Applicable.

1. Petitioners devote the major portion of their Point III (Br. for Pet. p. 39 *et seq.*) to an attack upon this Court's holdings in *Terrace v. Thompson*, 263 U. S. 197, to which the California cases *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313, and *Frick v. Webb*, 263 U. S. 326, refer. The substance of their attack is that they disagree with the decision. In seeking to disparage it, they call its statements "not only unconvincing but meaningless." (Br. for Pet. p. 43.)

In so doing they make themselves authority for a statement that the fact that "one who is not a citizen and cannot become one" bears no relation whatever to his "interest in and power to work effectively for the state." As opposed to what this Court has held, their position is that "the quality and allegiance of those who own, occupy and use farm lands" cannot be regarded as matters of any importance to the "safety and power of the state,"—to say that they are is "meaningless."

What petitioners' contention reduces itself to is that this Court was totally lacking in sound concept when it ascribed the importance it has to either the status of citizenship or the relationship which the ownership of its land bears to the welfare and safety of a state. To deny to bonds of allegiance, and the right to be bound by such bonds as well, all significance and meaning as related to loyalty and the desire and ability to effectively work for the success of the state, and to hold that the ownership of the very soil itself is devoid of all relation to the state's

welfare and continued safety could result in a marked de-vitalization of the entire citizenry.

Any speculative comparison of a possible loyalty of one ineligible to become a citizen with a possible lack of loyalty on the part of one already a citizen or at least eligible to become such involves a question of the person equation, an individualized attitude of heart and mind—something as to which classifications upon a reasonable basis cannot be and are not required to be infallible.

Patsone v. Pennsylvania, 232 U. S. 138.

Petitioners' reference (Br. for Pet. p. 44) to the State's Brief in Opposition as containing "echoes of old prejudices" is ill-advised. Respondent did there refer to the decision of the Circuit Court of Appeals in *Terrace v. Thompson* (274 Fed. 841, at 849), but for the specific purpose of showing that it was plain that "questions as to race or color, as such, played no part as a determining factor in the classification," and that what was looked to were basic concepts and underlying tendencies of deep significance and importance, as a result of which it was said that these people were not fitted or suited to make for the success of our form of government. Nor are the "solidarity" and the "lack of assimilation", referred to in our Brief in Opposition, terms originated or theretofore employed by us. They were employed in a noteworthy decision of this Court, *Hirabayashi v. United States*, 320 U. S. 81, to which particular attention is now called. We think that this decision, which recognizes not only matters of demonstrated factual existence but matters which may have reasonably been believed to give rise to concern, demonstrates plainly that the adoption of the Alien Land Law did not transgress constitutional limitations.

In *Hirabayashi v. United States, supra*, at 96, Mr. Chief Justice Stone, speaking for the court in an opinion from which there was no dissent, although three Justices separately concurred, stated with great candor, fairness and liberality those considerations other than race which justified a military curfew regulation made applicable to Japanese and Japanese-Americans. The Chief Justice's statement of such reasons is as follows:

"There is support for the view that social, economic and political conditions which have prevailed since the close of the last century, when the Japanese began to come to this country in substantial numbers, have intensified their solidarity and have in large measure prevented their assimilation as an integral part of the white population. In addition, large numbers of children of Japanese parentage are sent to Japanese language schools outside the regular hours of public schools in the locality. Some of these schools are generally believed to be sources of Japanese nationalistic propaganda, cultivating allegiance to Japan. Considerable numbers, estimated to be approximately 10,000, of American-born children of Japanese parentage have been sent to Japan for all or part of their education.

"Congress and the Executive, including the military commander, could have attributed special significance, in its bearing on the loyalties of persons of Japanese descent; to the maintenance by Japan of its system of dual citizenship. Children born in the United States of Japanese alien parents, and especially those children born before December 1, 1924, are under many circumstances deemed, by Japanese law, to be citizens of Japan. No official census of those whom Japan regards as having thus retained Japanese citizenship is available, but there is ground for the belief that the number is large.

"The large number of resident alien Japanese, approximately one-third of all Japanese inhabitants of the country, are of mature years and occupy positions of influence in Japanese communities. The association of influential Japanese residents with Japanese Consulates has been deemed a ready means for the dissemination of propaganda and for the maintenance of the influence of the Japanese Government with the Japanese population in this country.

"As a result of all these conditions affecting the life of the Japanese, both aliens and citizens, in the Pacific Coast area, there has been relatively little social intercourse between them and the white population. The restrictions, both practical and legal, affecting the privileges and opportunities afforded to persons of Japanese extraction residing in the United States, have been sources of irritation and may well have tended to increase their isolation, and in many instances their attachments to Japan and its institutions.

"Viewing these data in all their aspects, Congress and the Executive could reasonably have concluded that these conditions have encouraged the continued attachment of members of this group to Japan and Japanese institutions. These are only some of the many considerations which those charged with the responsibility for the national defense could take into account in determining the nature and extent of the danger of espionage and sabotage, in the event of invasion or air raid attack. The extent of that danger could be definitely known only after the event and after it was too late to meet it. Whatever views we may entertain regarding the loyalty to this country of the citizens of Japanese ancestry, we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members

of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and adequate measures be taken to guard against it."

It is true that the Chief Justice continued to say:

"Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection."

It is to be noted that the statement made refers to "distinctions between citizens." There is here no such discrimination. As to aliens it has been a uniform national policy from the earliest days.

The Chief Justice's footnote (No. 4) is herewith reprinted as a summary of the kinds of discrimination which have been employed without offense to constitutional considerations:

"Federal legislation has denied to the Japanese citizenship by naturalization (Rev. Stat. 2169, 8 U. S. C. A. 703, 2 F. C. A. Title 8, 703; see Ozawa v. United States, 260 U. S. 178, 67 L. Ed. 199, 43 Sup. Ct. 65), and the Immigration Act of (May 26) 1924, excluded them from admission into the United States, 43 Stat. 161, c. 190, 8 U. S. C. A. 213, 2 F. C. A. Title 8, 213. State legislation has denied to alien Japanese the privilege of owning

land. 1 California General Laws (Deering, 1931), Act 261; 5 Or. Comp. Laws Ann. (1940), 61-102; 11 Wash. Rev. Stat. Ann. (Remington, 1933) 10581-10582. It has also sought to prohibit intermarriage of persons of Japanese race with Caucasians. Mont. Rev. Codes (1935), 5702. Persons of Japanese descent have often been unable to secure professional or skilled employment except in association with others of that descent, and sufficient employment opportunities of this character have not been available. Mears, Resident Orientals on the American Pacific Coast (1927), pp. 188, 198-209, 402, 403; H. R. Rep. No. 2124, 77th Cong. (2d) Sess. pp. 101-138."

The decision in the *Hirabayashi* case sustains a wartime curfew regulation applicable to *alien and citizen* of Japanese ancestry alike. The later decisions of the United States Supreme Court, *Ex parte Endo*, 323 U. S. 302, 89 L. Ed. Adv. Op. 219, and *Korematsu v. United States*, 323 U. S. 239, 89 L. Ed. Adv. Op. 202, deal with the rights of *loyal* citizens to freedom from arbitrary detention in relocation centers. We are here dealing not with citizens, but with aliens; not with loyalty, but with fraud and deceit found and determined after a fair trial in open court.

That at the time of the enactment of the Alien Land Law there was a rational basis therefore is abundantly demonstrated by Chief Justice Stone in the *Hirabayashi* case, in addition to the earlier decisions specifically construing the Alien Land Law. We also refer again for specific factual references to the "Brief of the United States" in the *Hirabayashi* case. (Appendix "C," *infra*, pp. 9-19.) And that there was realistic cause for concern by reason

of the well-entrenched position of those ineligible to become citizens is vividly shown by the maps depicted in Appendix "B," *infra*, p. 7, *et seq.*

While petitioners attack the statement in *Terrace v. Thompson, supra*, that it is within the realm of possibility that all the land within the state might pass to the ownership or possession of non-citizens as "meaningless" and "unreasonable," the fact of entrenchment in the richest agricultural, food-producing sections of California made by 1922 is not to be superficially dismissed. Who is there who can say what more alarming proportions would have been reached had not the restraint of the Alien Land Law been imposed,—and who will say that such control by aliens ineligible to citizenship might not have had serious consequences?

The fact the legislature of California in 1913 and the electors by initiative in 1920 passed this law, and the Supreme Court of California on numerous occasions unanimously and this Court unanimously have sustained the legislation, as well as the fact that nine other states have passed similar laws, are entitled, we believe, to the most careful consideration. And if the canon of construction that the proper test is not whether the Court accepts the reasoning which brought about the legislation as conclusive, but is, instead, whether the reasoning is such that the Court might admit the possibility that a rational mind could entertain such reasoning, the result is obvious.

Petitioners contend, however (Br. for Pet. pp. 48-49), that conditions have changed since the enactment of this law. We assume their claim to be that in the instant case, therefore, it cannot be enforced—even though the law when enacted were conceded to be valid.

The transactions in which the Alien Land Law was violated in this case were had in 1934 and in 1937, respectively. Under the statute (sections 7 and 9) these transactions by which the ineligible alien sought to acquire the lands were *void* as to the state and the lands immediately and automatically escheated to the state. See also opinion of the court below. [R. 117, 118.] At the time as of which the law is applicable in this case there had been no narrowing of the Naturalization Laws as to Orientals. Neither had there been any of the other changes mentioned by petitioners, with the exception of some natural deaths of ineligible aliens. Hence, it can scarcely be claimed that later changes could affect a valid law's application in this case. As pointed out by the court below [R. 118] in answer to the argument that a change in the requirements of naturalization by the 1942 amendment made Kajiro Oyama eligible to citizenship, the parcels of land here involved automatically escheated to the state in 1934 and 1937, respectively, and "Title vested in the state upon these dates, and later legislation has no effect upon that title." Were it even to be assumed that conditions and circumstances as of 1947 were *wholly* changed and that it were possible for a valid law to be thereby in some way affected, the result which occurred by reason of its operation at a time when such changes had not taken place and no cause existed for holding it defective would not be affected. This Court held in *Korematsu v. United States*, 223 U. S. 214:

"We uphold the exclusion order as of the time it was made and when the petitioner violated it."
(at p. 220.)

and

"We cannot—by availing ourselves of the calm perspective of hindsight—now say that at that time these actions were unjustified." (at p. 224.)

But, aside from the lack of applicability of the "changed conditions" argument in the instant case, we are unable to agree, in the light of this Court's clear and positive decisions, that a new era has been ushered in, when eligibility to citizenship in this nation may no longer constitute a reasonable basis for classification as to the right to own land. Would we thus be asked to assume that the Acts of Congress defining eligibility are "arbitrary and unsupported by reasonable considerations of public policy?" Is the assurance that "the state properly may assume that the considerations upon which Congress made such classification are substantial and reasonable" to be regarded as shorn of its integrity and not to be relied upon?

The state has been told that, in the absence of treaty provisions to the contrary, it has the right to deny to aliens the right to own land within its borders; also that in the exercise of its powers of police it has wide discretion in determining its own public policy and what measures are necessary for its own protection "and properly to promote the safety, peace and good order of its people." (*Terrace v. Thompson, supra*, at 217.)

The state has not here made an arbitrary classification. It has not said that Burmese or Japanese or Yugoslavs or that any other designated people may not own land in California. It has legislated upon the right to land ownership by reference to a recognized, basic classification,—that of eligibility to citizenship. True, the num-

ber of those embraced in the ineligible class has been narrowed by amendments of Congress to its Naturalization Laws. But who will say that the class may not be hereafter substantially broadened by Congress? Who will gainsay its right so to do? And by what yardstick are we to say that Congress has measured its action,—by one governed by likes or dislikes addressed to color of skin or form of worship? Certainly considerations far more penetrating than these control, considerations having to do with attachments to certain concepts of government and with abilities and desires to work for the success and preservation of ours.

We live in a realistic day. There are many citizens who have not yet had time to forget the shocks of disillusionment. They have yet to accept the view that the millennium is here—or that it is even imminent. They wonder just how sanguine or naive they are called upon to be in the face of events past and current. They recall what Mr. Justice Holmes said: "A page of history is worth a volume of logic."

Two further arguments are advanced by petitioners. First, they suggest that the Alien Land Law is "perilously close" to invading the federal field in the area of international relations. (Br. for Pet., pp. 49, 50.) This ignores the fact that this law was designed to avoid this completely. It not only legislates in a field recognized by this Court as its exclusive province (whereas in *Hines v. Davidowitz*, 312 U. S. 52, the power to legislate was

concurrent and the Federal Government had occupied the entire field)—it accepts a primary federal standard in determining the class as to which the law operates. Furthermore, it has specifically honored and protected rights vouchsafed by treaties. Congress can at any time redefine ineligible persons,—or it abolish all ineligibility entirely. The State Department may negotiate treaties whereby the citizens of any contracting party may be extended unlimited rights to own land,—which treaties would clearly prevail over the Alien Land Law.

In *Clark v. Allen*, 67 Sup. Ct. Rep. 1431, 1439, this Court recently upheld certain sections of the California Probate Code which make the right of non-resident aliens to take by succession or testamentary disposition dependent upon the existence of a reciprocal right on the part of citizens of the United States to take property on the same terms and condition as residents and citizens of the other nation. These provisions were attacked upon the same ground as that suggested here; viz., that they constituted "an extension of state power into the field of foreign affairs, which is exclusively reserved by the Constitution to the Federal Government." This Court disposed of the contention as follows (p. 1439):

"What California has done will have some incidental or indirect effect in foreign countries. But that is true of many state laws which none would claim cross the forbidden line."

We think the finding applies here equally as in *Clark v. Allen*.

Finally, the reference of petitioners (Br. for Pet., 52, 53) to the United Nations Charter at the close of their argument lacks applicability for several reasons. First, and we believe conclusive, is the fact that this Charter was not enacted until long after the unlawful transactions took place and the land escheated to the State. As was held by the Court below with reference to a claim made (now abandoned) that the 1942 Amendment to the Naturalization Act made the elder Oyama eligible to citizenship: "The title vested in the State upon these dates (1934 and 1937), and the later legislation has no effect upon that title." [R. 118.] Second, we believe it has been shown that the Alien Land Law classification is not one based on "race," as such, and it clearly has nothing to do with "sex, language or religion." Third, we know of no construction of our courts, and have been referred to none, holding that the right to own land is embraced in the terms "fundamental freedoms" or "human rights." (*Cf. West Virginia State Bd. of Ed. v. Barnette*, 319 U. S. 624; *Thomas v. Collins*, 323 U. S. 516.) Finally, this question, assuming that there is one, was not raised below and cannot be here injected for the first time.

IV.

Limitation of Actions.

Petitioners allege QBr. for Pet. pp. 53-56) that California has imposed a newly added statute of limitations after its right of action had been completely barred, thereby disturbing vested rights.

It is not disputed that as a general proposition, and as stated in the language which petitioners quote from *Stewart v. Keyes*, 295 U. S. 403 (a case involving an act of Congress) that where a right of action has been completely barred by a statute of limitations an attempt by a legislature to revive the barred claim would amount to a deprivation of property without due process of law. This proposition is not here applicable for the following reasons:

1. Mere lapse of time does not bar a possessory action by an owner in California.

Again respondent emphasizes that Section 7 and Section 9 of the Alien Land Law, by the plain meaning of their language and as construed by the court below herein as well as in *People v. Nakamura*, 125 Cal. App. 268, provide that escheats shall be automatic and immediate. Title to parcel one in 1934 and to parcel two in 1937 passed to the State, as the California Supreme Court held, "*instanter*." From this it follows that the State, which became the owner at the times mentioned, succeeded to the same property rights as any other owner of real property. Such owners may in California bring possessory actions

which are not to be defeated by mere lapse of time or the running of statutes of limitations.

McKelvey v. Rodriguez, 57 Cal. App. (2d) 223;
Westphal v. Arnoux, 51 Cal. App. 532.

Instead the defendant must plead and prove as an affirmative defense that plaintiff's action is barred by adverse possession.

Reed v. Smith, 125 Cal. 491;

Warden v. Bailey, 133 Cal. App. 383.

The elements of adverse possession are clearly defined in the California cases as distinct from statutes of limitation.

At 1 Cal. Jur. 490 it is said the difference between statutes of limitation as they are known to the courts of law and the laws of prescription are: that the one confers a right and the other takes away a remedy.

Alhambra Addn. Water Co. v. Richardson, 72 Cal. 598;

Billings v. Hall, 7 Cal. 1;

Akley v. Bassett, 189 Cal. 625.

It is well settled that in California the elements of adverse possession are five:

1. Actual occupation
2. hostile to the true owner's title
3. held under a claim exclusive of any other right
4. continuous and uninterrupted
5. accompanied by payment of taxes.

1 Cal. Jur. 522;

Miller & Lux v. San Joaquin Power & Light Co.
8 Cal. (2d) 427.

In the present case although an attempt was made to raise the statute of limitations by demurrer, the affirmative defense of adverse possession was not raised by answer. If there was a possibility of any claim being made by Fred Oyama here it must have been pleaded and proved as an affirmative defense of adverse possession. This was not done. In all of the cases where Section 315 of the Code of Civil Procedure has ever been applied against the state, the language of the decision speaks of adverse possession and not mere lapse of time.

People v. Kings Development Co., 177 Cal. 529;

People v. Center, 66 Cal. 551, at 565;

People v. Banning Co., 167 Cal. 643, at 650;

People v. Kerber, 152 Cal. 731 at 733, 734.

2. The case was correctly decided on the merits.

As to an alien ineligible to own, possess, occupy, control or otherwise enjoy land in California, it is submitted that the court below did no more than arrive at a reasonable and inescapable construction of the Alien Land Law in determining that as to such alien the statutes of 1913 and 1920 could not be reconciled with Section 315 of the Code of Civil Procedure, which was adopted in 1872. As to such alien the later and inconsistent act must control. How indeed could a period of continuous incapacity to own, possess or occupy add up after ten years to a secure title?

Indeed, Section 315 of the Code of Civil Procedure, when last before this Court in *Weber v. State Harbor Commissioners*, 85 U. S. 57, was held inapplicable in the face of other and later legislation inconsistent with it in purpose and legislative intent. After discussing the origin and theory of statutes of limitation and the presumption

created thereby, the decision points out that statutes of limitation are not held to embrace the state unless she is expressly designated, or necessarily included by the nature of the mischiefs to be remedied. Justice Field stated at pages 70-71:

“The statute of California is exceptional in this particular. It declares that the state will not sue for or in respect to real property, unless her title or right *has existed* within a prescribed time, or rents or profits have been received within that period. She thus allows a presumption to arise in favor of any occupant of her lands, and that presumption to become absolute, that she possesses no title or interest therein, if within that period no assertion of her title or interest is made. *But this presumption is rebutted when such assertion is made and it may be made by her as well by legislative act as by judicial proceeding.*” (Emphasis added.)

This “assertion” was held to have been made by the enactment of the harbor commissioners act—even though its provisions were wholly silent as to limitations of actions. The determining factor was that it was a public act, relating to a matter of public concern, and from it the intent of the legislature was clear that no statute of limitations should operate to thwart its purpose. This is forcefully stated in the concluding paragraph of the decision (at p. 71):

“In the present case, the act creating the harbor commissioners and authorizing them to take possession and improve the water front, was a *public act relating to a matter of public concern, of which the complainant and all others were bound to take notice.* Hardly anything, which we can readily con-

ceive of, would be more expressive of the intention of the legislature that the state should conserve her title and interest in the whole water front of the city. In our judgment, *it prevented the complainant from acquiring the title of the state by operation of the statute of limitations; as effectively as if that statute had not been in existence.*" (Italics added.)

Just as the United States Supreme Court squarely based its decision that this limitation could not be invoked upon the intent of the act of the legislature in the *Weber* case, so is it clear that the policy and intent of the electors and the legislature in enacting the Alien Land Law has precisely the same effect here. The "matter of public concern" which gave rise to this public act, is clearly no less impressive or important than that of the harbor commissioners act—and all were bound in no less degree to take notice of it. The alien land law legislation has been held to "directly affect the public welfare and safety," indeed, to be "vital to the political existence of the State." (*Mott v. Cline*, 200 Cal. 434, 447.)

3. The statute of limitations is a local question of procedure.

As previously urged, California believes that the statute of limitations is a purely local issue, that no federal question is involved, and that the attempted federal question should not be here considered because it was not raised or presented below. True, there was voluminous briefing as to whether as a matter of local law the statute of limitations had run. There was, however, no suggestion that an adverse decision would deny due process or equal protection.

That local procedure may be decided by a state court without impinging on the federal domain is shown by:

Preston v. Chicago, 226 U. S. 447;

Moran v. Horsky, 178 U. S. 205;

Wood v. Chesborough, 228 U. S. 672;

Harrison v. Myer, 92 U. S. 111;

Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287.

Applied specifically to statutes of limitation, this Court held in *Chase Securities Corporation v. Donaldson*, 325 U. S. 304, at 311-312:

"In *Campell v. Holt*, *supra*, this court held that where lapse of time has not invested a party with title to real or personal property, a state legislature, consistently with the Fourteenth Amendment, may repeal or extend a statute of limitations, even after right of action is barred thereby, restore to the plaintiff his remedy, and divest the defendant of the statutory bar. This has long stood as a statement of the law of the Fourteenth Amendment, and we agree with the court below that its holding is applicable here and fatal to the contentions of appellant."

In the opinion of the California Supreme Court [R. 119] it is made clear that at no time did petitioners enjoy any vested right, even as a right of repose. Petitioners cite *Stewart v. Keyes*, *supra*, a case in which Congress, not a state, attempted to revive an action

which was clearly and demonstrably barred, thereby defying due process. They also cite *Campbell v. Holt*, 115 U. S. 620, and *Chase Securities Co. v. Donaldson*, *supra*. Both of these cases support the right of legislatures to extend or repeal statutes of limitations where no vested rights have intervened. In the *Chase Securities* case even more was done, since the action there may possibly have been once barred when the intervening legislation gave it new vigor. This Court held:

“Whatever grievance appellant may have at the change of policy to its disadvantage, it acquired no immunity from this suit that has become a federal constitutional right.” (325 U. S. at p. 316.)

In the case at bar the California Legislature and Supreme Court [R. 119] have both declared, not that a bar should be lifted, either prospectively or retroactively, but instead that there *never was* a bar. This decision of local law, it is submitted, is not only intrinsically reasonable and entitled to respect from other courts as the authoritative declaration of the law of California,—it is entirely a local problem and was so regarded by both parties below.

4. The case as to Kajiro Oyama is moot.

It must here be again stressed that the positions of the father and son Oyama are essentially different. If the position consistently taken by the son be correct, if in fact he received a valid gift from his father, then he does not need any statute of limitations. California and

its law enforcement agencies, once they are convinced by investigation or judicial decision that he is the owner of property, will be zealous to protect his interest against all comers. As to the father, does not his disclaimer of any right or interest in the property logically remove his claim of the statute of limitations from the case? The son, if entitled by ownership or by adverse possession, does not need the statute of limitations, which has already been shown to be inapplicable to possessory actions brought by an owner. Petitioner Kajiro Oyama, having disclaimed all right or interest in the property, should not be heard on any issue in the case, since the court will not hear moot or feigned issues.

Market St. Ry. v. Railroad Commission, 324 U. S. 548;

Natural Milk Producers v. San Francisco, 317 U. S. 423;

Cincinnati v. Vester, 281 U. S. 439;

Liberty Warehouse Co. v. Burley Tobacco Growers, 276 U. S. 71.

In summary, as to the statute of limitations, the petitioners never acquired a vested right; the determination of the State Supreme Court that no statute runs in favor of an ineligible alien is a reasonable decision and is harmonious with the construction placed upon the California statute of limitations by this Court in *Weber v. Harbor Commissioners*, *supra*. Furthermore, the question was not preserved or presented in the courts below as a federal question.

Conclusion.

Wherefore, the decision below should be sustained.

Respectfully submitted,

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APPENDIX "A."

The California Alien Land Law (Alien Property Initiative Act of 1920, as amended, Stats. (1921), p. lxxxiii, in effect, December 9, 1920; amended by Stats. (1923) c. 441, p. 1020; Stats. (1927) c. 528, p. 880; Stats. (1943) c. 1003, p. 2917, c. 1059, p. 2999; Stats. (1945) c. 1129, p. 2114, c. 1136, p. 2177; Deering's Gen Laws, Act 267) provides in part as follows:

"Sec. 1. All aliens, eligible to citizenship under the laws of the United States may acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the same manner and to the same extent as citizens of the United States except as otherwise provided by the laws of this state. (Amended by Stats. 1923, p. 1021.)

"Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy, use, cultivate, occupy and transfer real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the manner and to the extent, and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise. (Amended by Stats. 1923, p. 1021.)

* * * * *

"Sec. 4. Whenever any alien mentioned in Section 2 hereof is appointed by any court as a guardian of his native-born minor child or children, or as a guardian of any other person or persons, it shall be unlawful for such

said alien guardian to farm, operate or manage any land or lands held by such guardianship estate, except solely for the use and benefit of the ward or wards of said estate, or to enjoy, possess or have, in whole or in part, the beneficial use of any such said land or lands so held or possessed or which belong to any such said guardianship estate, nor shall said alien guardian have or enjoy or receive directly or indirectly the beneficial use of such said lands or the proceeds received from the sale of any crops produced, grown or raised thereon; it being the intent of this section that no alien mentioned in Section 2 hereof shall by any guardianship proceedings whatsoever evade or violate or seek to evade or violate any of the provisions of this statute.

"In all such said guardianship estates, the alien guardian must make every year a report to the court in which said guardianship estate is pending, showing in detail and supported by receipts, all money disbursed, expended and paid out by said guardian, to whom same was paid, for what purpose, and the date of such said disbursement or payment. Also all money received, from whom received, for what purpose received, and the date of the receipt thereof. A copy of said report shall be served by the guardian on the district attorney of the county, and said guardian shall give said district attorney notice of the hearing of said report. Failure on the part of the said alien guardian so to make such report, or serve such copy thereof, or notify such district attorney shall constitute a direct violation hereof, for which said guardian may be prosecuted and punished as set forth in Section 10a of this act.

"Said alien guardian shall include in such report such other matters and items as the court may require, the said

alien guardian to be under the absolute jurisdiction and control of the court at all times, and the court may from time to time require said alien guardian to make special reports on all things pertaining to said guardianship estate. The court may also require the ward of any such said guardianship estate to be produced in court whenever said court may deem such procedure necessary and proper for the protection of said guardianship estate.

"The court shall have the power to fix the compensation of the said alien guardian at such amount as the court may determine. The court shall also fix the amount of bond to be given by said alien guardian. The court shall also fix and determine the amount of attorney's fees in all such guardianship matters.

"Whenever any alien guardian shall fail, neglect or refuse to comply with the terms and provisions hereof, he may be removed as guardian of said estate by the court, when deemed to be for the best interests of said estate.

"The court shall require a final account to be filed on behalf of any such guardianship estate at the time the ward or wards shall become 21 years of age. The court may also require such matters to be included in said report as said court may deem to be necessary and proper. No such guardianship estate shall be finally closed until the final report shall have been filed and approved by the court.
(As amended by Stats. 1943, Ch. 1059, Secs. 1, 2.)

"Sec. 5. (a) The term 'trustee' as used in this section means any person, company, association or corporation that as guardian, trustee, attorney in fact or agent, or in any other capacity has the title, custody or control of property, or some interest therein, belonging to an alien men-

tioned in section two hereof, or to the minor child of such alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it.

(b) Annually on or before the thirty-first day of January every such trustee must file in the office of the secretary of state of California and in the office of the county clerk of each county in which any of the property is situated, a verified written report showing:

(1) The property, real or personal, held by him for or on behalf of such alien or minor;

(2) A statement showing the date when each item of such property came into his possession or control;

(3) An itemized account of all such expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in respect to land and the handling or sale of products thereof.

(c) Any person, company, association or corporation that violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(d) The provisions of this section are cumulative and are not intended to change the jurisdiction or the rules of practice of courts of justice.



"Sec. 7. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in Section 2 of this act, or by any company, association or corporation mentioned in Section 3 of this act, shall escheat as of the date of such acquiring, to, and become and remain the property of the State of California. (As amended by Stats. 1945, Ch. 1129.)

* * * * *

"Sec. 8.5. No statute of limitations shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions of this act. (Added by Stats. 1945, Ch. 1136, Sec. 1.)

(The statute adding this section provides further: "Sec. 2. The amendment made by this act does not constitute a change in, but is declaratory of, the pre-existing law.")

"Sec. 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the State and the interest thereby conveyed or sought to be conveyed shall escheat to the State as of the date of such transfer, if the property interest involved is of such a character that an alien mentioned in Section 2 hereof is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

"A *prima facie* presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:

“(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof;

“(b) The taking of the property in the name of a company, association or corporation if the memberships or shares of stock therein held by aliens mentioned in Section 2 hereof, together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a majority of the membership or issued capital stock of such company, association or corporation;

“(c) The execution of a mortgage in favor of an alien mentioned in Section 2 hereof if such mortgagee is given possession, control or management of the property.

“In each of the foregoing instances the burden of proof shall be upon the defendant to show that the conveyance was not made with intent to prevent, evade or avoid escheat.

* * * * *

“The enumeration in this section of certain presumptions shall not be so construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein. (Amended by Stats. 1945, Ch. 1129, Sec. 4.)”

* * * * *

APPENDIX "B."

*"California and the Oriental," Report of State Board
of Control, 1920. California State Printing Office, 1922,
pp. 53, 54, 55, 57, 59, 61, 67.*



LAND MAPS

Showing

ORIENTAL OCCUPANCY

On the following page is given a relief map of California, showing mountain ranges and the valley lands capable of intense cultivation. On this map has been drawn five squares, outlining five of the richest agricultural districts in California occupied by Orientals.

The map shows considerable mountain areas, and of the valley lands there are but 3,893,500 acres now under irrigation. It is on these lands, the best in the State, that the Oriental has colonized and now occupies 623,752 acres, of which 458,056 acres are occupied by Japanese.

On pages following this relief map are five different maps corresponding to the five districts outlined in the relief map, and which show extent of Oriental occupancy in each district, as follows:

Map No. 1—Rice district of Glenn, Colusa and Butte counties.

Map No. 2—Asparagus, Berry, Vegetable, Fruit and Vineyard sections of San Joaquin, Sacramento, Solano, Yolo, Sutter and Placer counties.

Map No. 3—Vineyard and Fruit districts of Fresno, Kings and Tulare counties.

Map No. 4—Vegetable and Fruit districts of Los Angeles and Orange counties.

Map No. 5—Cantaloupe and Vegetable districts of Imperial county.

Black spots indicate Oriental areas.



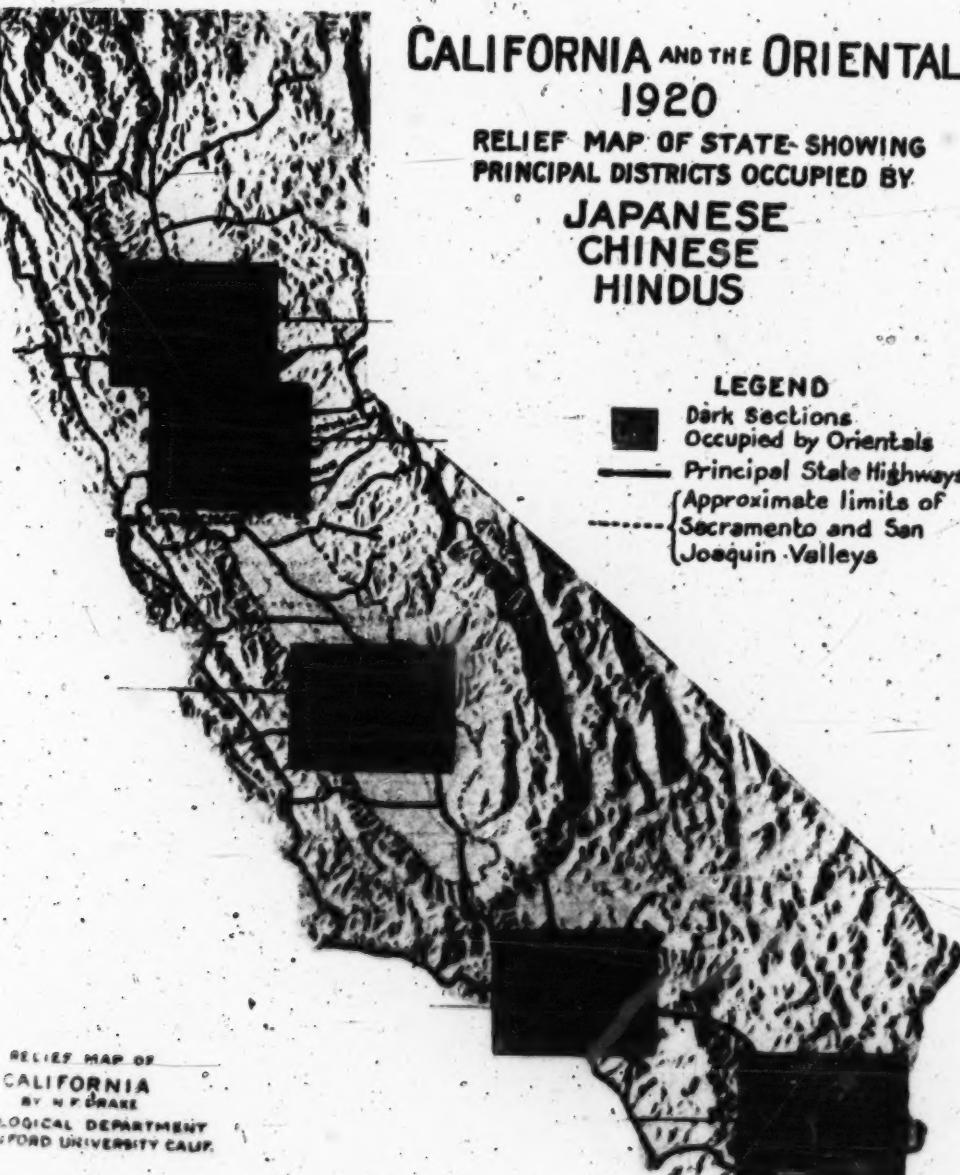
CALIFORNIA AND THE ORIENTAL 1920

RELIEF MAP OF STATE SHOWING
PRINCIPAL DISTRICTS OCCUPIED BY

JAPANESE
CHINESE
HINDUS

LEGEND

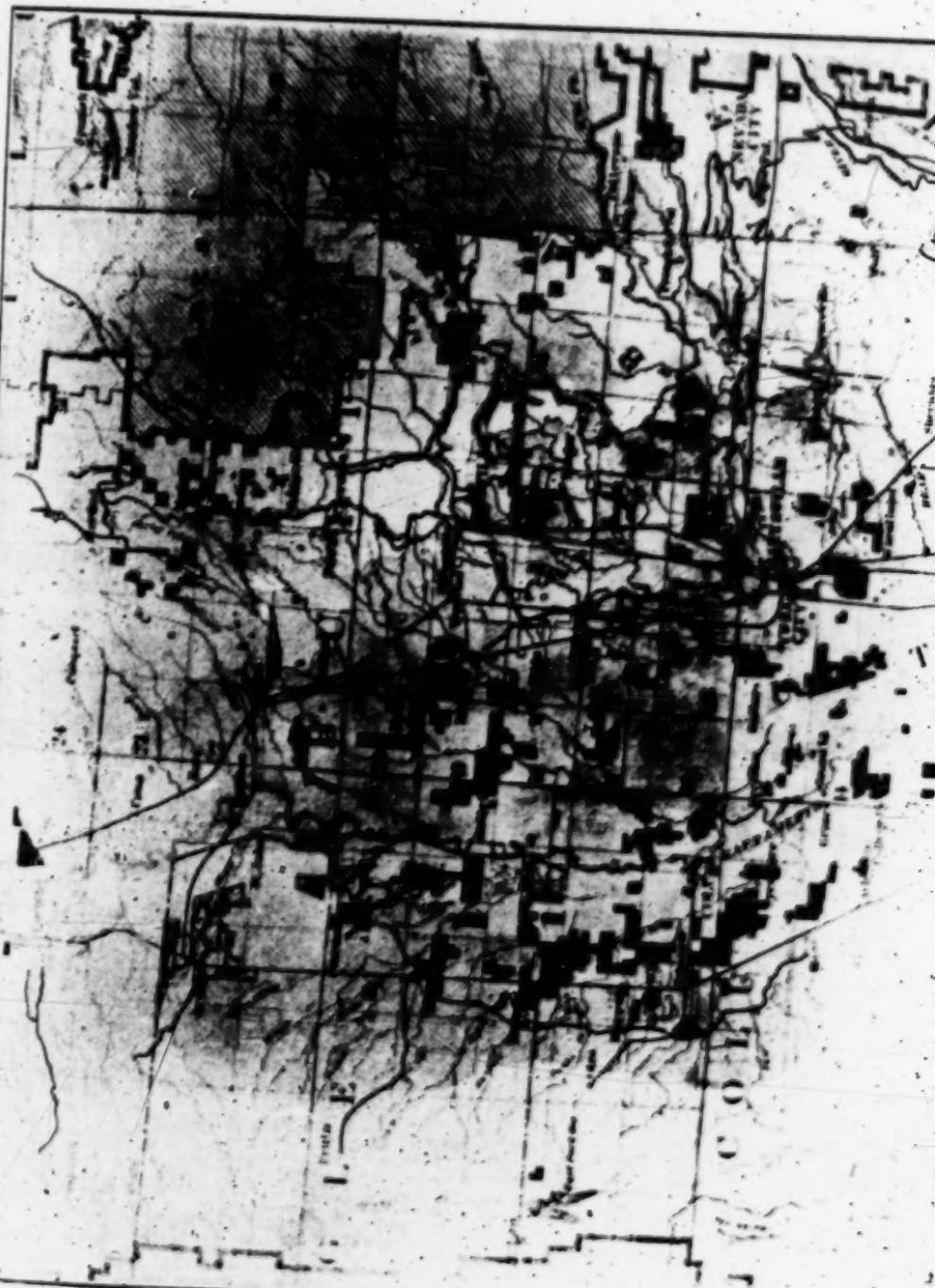
- Dark Sections
Occupied by Orientals
- Principal State Highways
- - - - Approximate limits of
Sacramento and San
Joaquin Valleys





LAND.

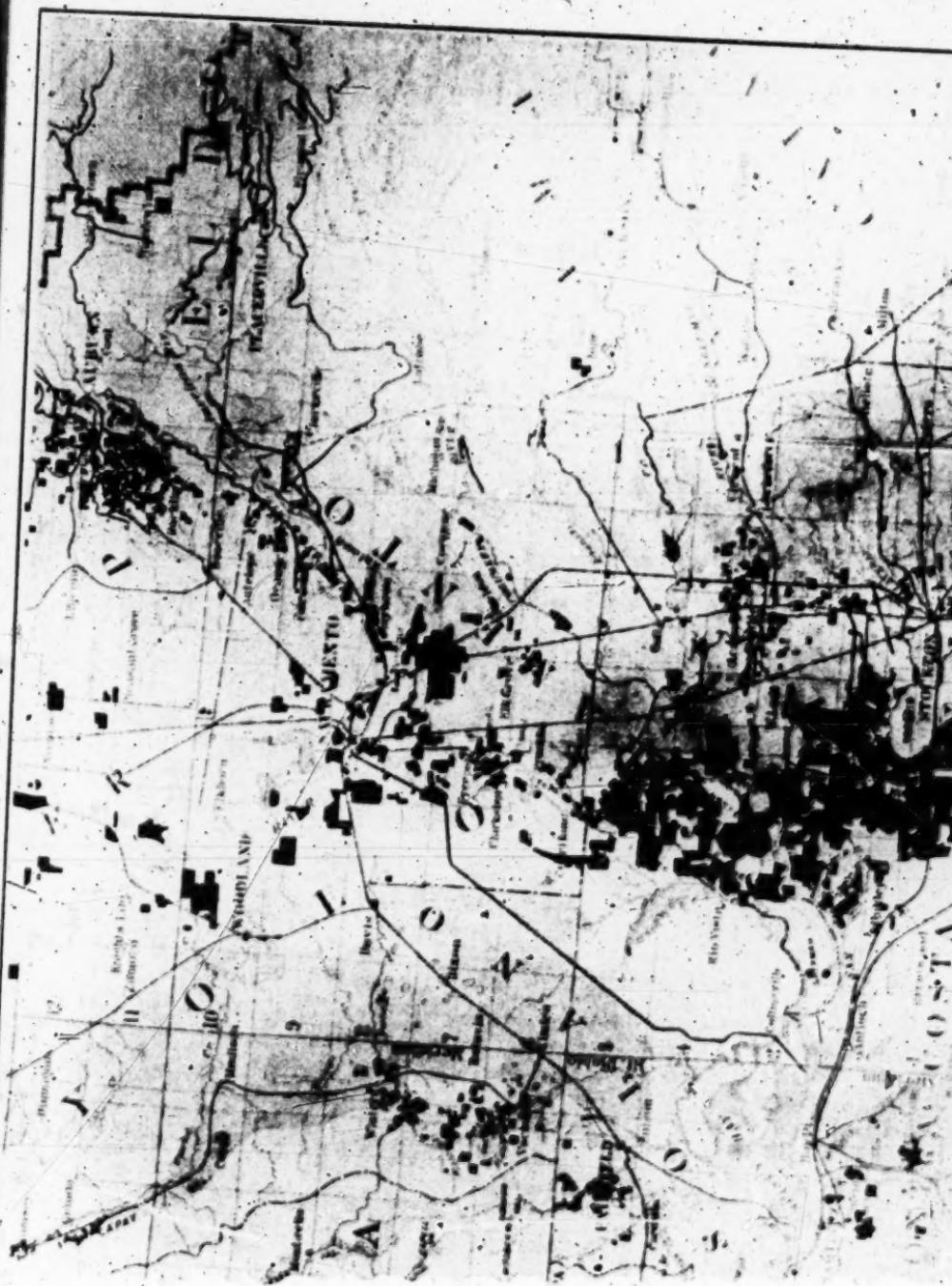
MAP NO. 1.





LAND.

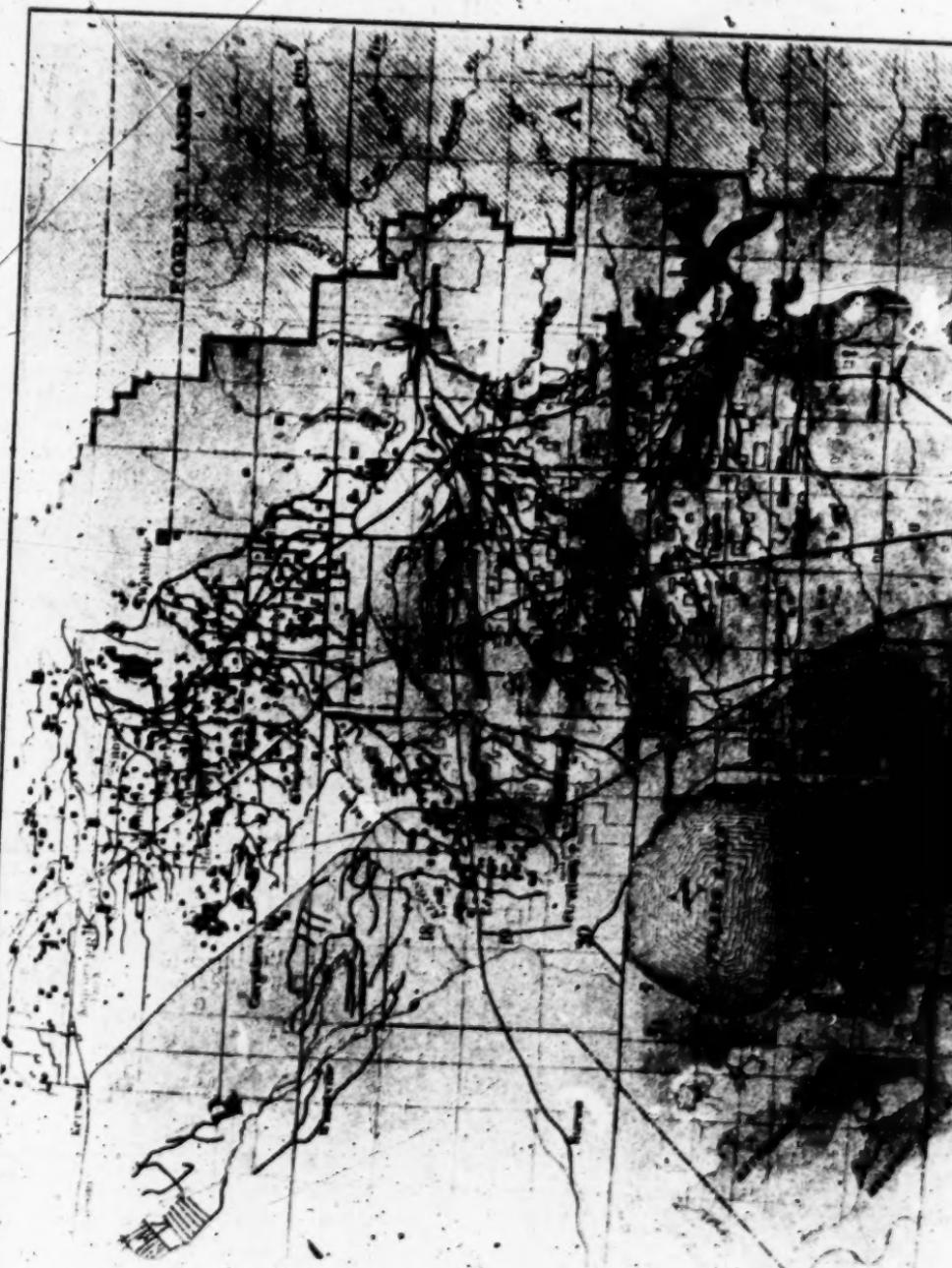
MAP NO. 2.





LAND.

MAP NO. 3.



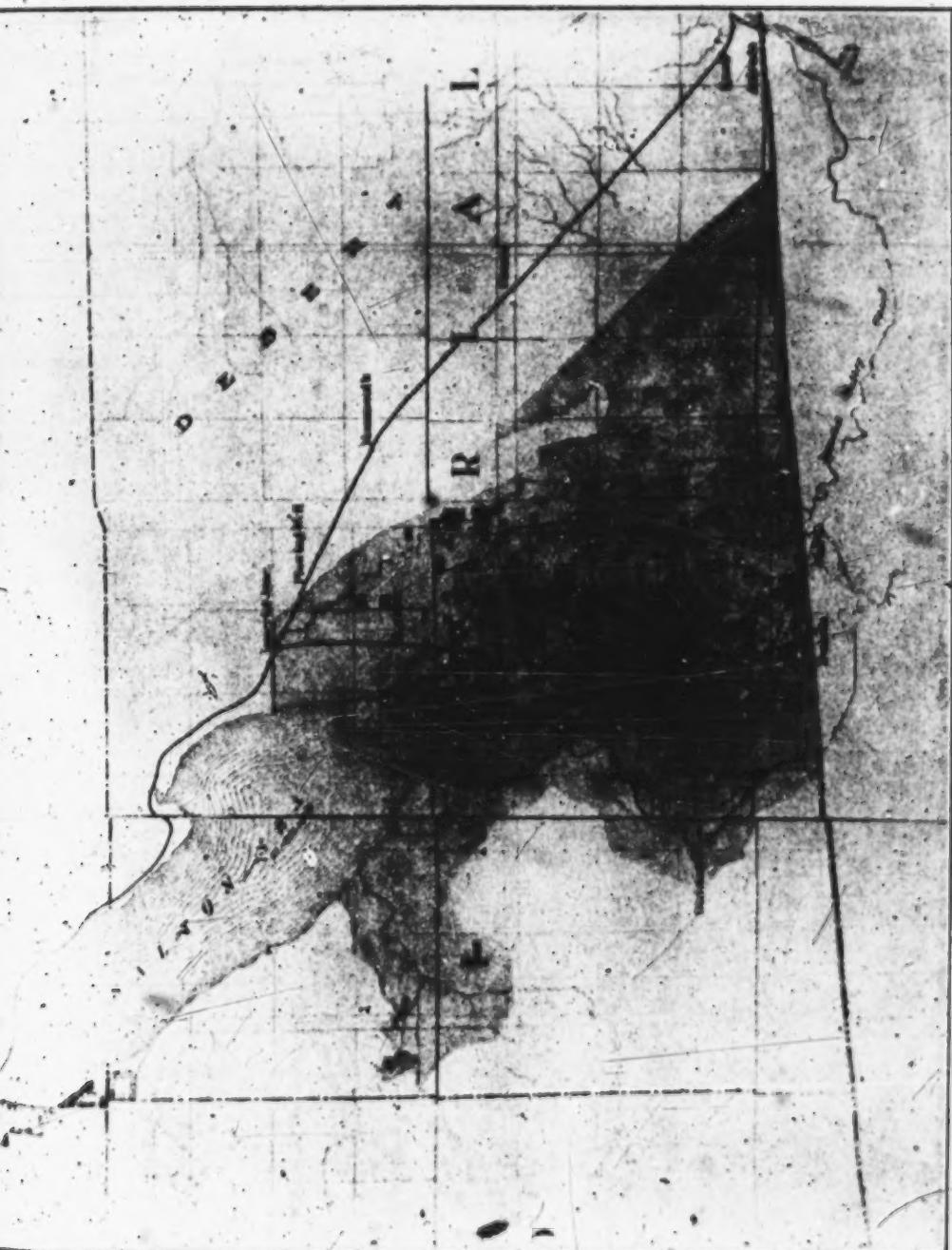


LAND.

MAP NO 4.



MAP NO. 5.



—9—

APPENDIX "C."

Excerpt from "Brief for the United States" in *Hirabayashi v. United States*, 320 U. S. 81, pages 19 to 31, inclusive:

Japanese Problem on the West Coast.—Japanese immigration to this country had created special problems at least since the close of the nineteenth century when the Japanese began to come to this country in substantial numbers.¹⁶ The intensity of the situation, involving their relationship to the rest of the community, has fluctuated under the stimulus of politics and some parts of the press.¹⁷ The prevailing viewpoint towards them was expressed in state legislation prohibiting alien Japanese from owning land¹⁸ and prohibiting inter-marriage with Caucasians,¹⁹ and by Section 13c of the Federal Immigration Law of 1924 (c. 190, 43 Stat. 161, U. S. C.,

¹⁶See Mears, *Resident Orientals on the American Pacific Coast* (1927), pp. 19-22, 39-43, 146-147, 156, 193; P. J. Treat, *Japan and the United States* (1928), p. 275; E. K. Strong, *The Second-Generation Japanese Problem* (1934), p. 1, ch. 4, p. 149; R. D. McKenzie, *Oriental Immigration*, 11 *Encyclopedia of Social Sciences* (1935), 490, 492-493; Hans Kohn, *Race Conflict*, 13 *Encyclopedia of Social Sciences* (1935), 36, 38; R. L. Buell, *Anti-Japanese Agitation in the United States*, 37 *Political Science Quarterly* (1922), 605, 608, *et seq.*, 38 *Pol. Science Quarterly* (1923), 57, *passim*; B. Schriek, *Alien Americans, A Study of Race Relations* (1936), pp. 24-36, 43.

¹⁷Mears, *op. cit. supra*, at p. 398; P. J. Treat, *op. cit. supra*, p. 281; S. L. Gulick, *The American Japanese Problem* (1914), p. 169; H. A. Millis, *The Japanese Problem in the United States* (1915), pp. 249-250; J. Pajus, *The Real Japanese California* (1937), p. 167.

¹⁸1913 Cal. Stat. 206, 1 Deering Gen. Laws, Act 261; 5 Oregon Comp. Laws Ann. Sec. 61-102; Washington, Rem. Rev. Stat. Sec. 10581-10582.

¹⁹California Civil Code Sec. 60; 2 Idaho Code Ann. Sec. 31-206; Revised Code of Montana, Sec. 5702; Arizona Code Ann. (1939), Sec. 63-107.

Tit. 8, Sec. 213) which, rather than allowing a quota to enter as in the case of non-Asiatics, excluded persons of the Mongolian race with limited exceptions. On the economic level, the Japanese could secure professional or skilled employment, with rare exceptions, only among others of the Japanese race and such employment opportunities were not sufficient to satisfy the number of Japanese who desired to engage in such work.²⁰ There was relatively little social intercourse between the Japanese and the white population,²¹ and the Japanese were, in general, physically isolated with respect to their places of residence.²²

The reaction of the Japanese to their lack of assimilation and to their treatment is a question which of course does not admit of any precise answer. It is entirely possible that an unknown number of the Japanese may lack to some extent a feeling of loyalty toward the United States as a result of their treatment,²³ and may

²⁰Mears, *op. cit. supra*, p. 188 *et seq.*, particularly pp. 198-209, 402-403; Strong, *op. cit. supra*, pp. 1-11, c. 10; Hearings Before the House Committee Investigating National Defense Migration, 77th Cong., 2d Sess., hereinafter called Tolan Committee Hearings, pp. 1558, 11560.

²¹Millis, *op. cit. supra*, pp. 288-289; Gulick, *op. cit. supra*, pp. 169-171; Schriek, *op. cit. supra*, pp. 39-40.

²²Mears, *op. cit. supra*, at pp. 341-342, 348-349; Steiner, *The Japanese Invasion* (1917), pp. 104-107, c. 8.

²³Iyenago and Sato, *Japan and the California Problem*, pp. 167-168, 172-177; Mears, *op. cit. supra*, pp. 106, 109-110, 153-154, 342; H. B. Johnson, *Discrimination Against the Japanese in California* (1907), *passim*; Ichihashi, *Japanese in the United States*, at p. 347. Cf. Strong, *op. cit. supra*, pp. 30-31.

On the other hand, an officer of the Japanese-American Citizens League expressed the view that he had not "become bitter" or lost faith as the result of discrimination and wished to combat it exclusively by democratic methods. Tolan Committee Hearings, pp. 11138, 11196-11197. And it stated in H. Rep. No. 1911, 77th Cong., 2d Sess., p. 20, that "most of the evacuees are loyal to this country."

feel a consequent tie to Japan, a heightened sense of racial solidarity, and a compensatory feeling of racial pride or pride in Japan's achievements.

Alienage—An additional factor to be considered is the alienage of a substantial portion of the Japanese who were born abroad and are therefore ineligible for citizenship. *Ozawa v. United States*, 260 U. S. 178. Although the alien Japanese comprised only about one-third of the Japanese on the West Coast,²⁴ they represented a much greater proportion of those who were likely to be an active force in the community. While over 60% of the native-born population was under the age of 20, over 95% of the foreign-born population was between the ages of 19 and 70.²⁵ Furthermore, approximately 24% of the alien Japanese population on the West Coast had last arrived in the United States since 1929,²⁶ and thus have been in Japan during the period of its emphasis on nationalism and expansion. The influence of the first, or alien, generation on the second generation must be considered in the light of the preponderance of persons of mature years among the former as compared with the latter, and also in the light of the family relationships between persons of the two generations, for filial obligation and emphasis on the family unit constitute a conspicuous phase of Japanese culture. It may be noted, however, that because of the stress of the attempt by second-generation Japanese to become assimilated and

²⁴See 16th Census of the United States, loc. cit. *supra*, note 14.

²⁵Source of computation: Bureau of Census Figures contained in Hearings before the Subcommittee of the Committee on Military Affairs of the United States Senate on S. 444, Part I, 1943, p. 65.

²⁶Tolan Committee Report, p. 96.

because of language difficulties between children and parents who have not learned to speak English fluently, parents have in many cases been unsuccessful in attempting to perpetuate the view that their children should follow their guidance, and a marked cleavage between the viewpoints and associations of the first and second generations has been observed.²⁷

As to those of the first generation, the fact of their alienage would tend to cause them to have some association with the Japanese Consulate.²⁸ And in general, the Japanese consuls were viewed as persons of considerable prestige by the alien population, and even some of the second generation seem to have regarded them as personages of some importance.²⁹ The possibility of Japanese propaganda through this means, as part of its preparations for any war against this country, is obvious.

Dual Nationality.—The possibility of a continuing loyalty to Japan, even on the part of the second generation is a significant consideration when viewed in the light of the provisions for dual nationality.³⁰ A child

²⁷See Ichihashi, *op. cit. supra*, at p. 348; Tolan Committee Hearings, pp. 11148, 11223; Second Quarterly Report (June 1 to September 30, 1942) of the War Relocation Authority, pp. 55-58; Schieke, *op. cit. supra*, pp. 36-39.

²⁸See H. Rep. No. 1911, Preliminary Report of Select Committee Investigating National Defense Migration, House of Representatives, 77th Cong., 2d Sess., p. 17.

²⁹See Miyamoto, *Social Solidarity Among the Japanese in Seattle*, 11 University of Washington Publications in the Social Sciences (December 1939), pp. 112-113; Tolan Committee Hearings, p. 11637.

³⁰Cf. Nationality Law of Japan, Article 1, Flournoy and Hudson, *Nationality Laws*, p. 382.

born in the United States of Japanese alien parents prior to December 1, 1924, automatically became entitled to and retained Japanese citizenship unless a petition of renunciation was filed on his behalf, by a legal representation before his 15th birthday, or by him at any time between his 15th and 17th birthdays. Such petitions would not become effective as renunciation of Japanese citizenship, however, unless personally approved by the Japanese Minister of the Interior.³¹

On the other hand, a child of Japanese alien parentage born in the United States after December 1, 1924, could claim or qualify for Japanese citizenship only if within 14 days of birth there had been filed on his behalf with the Japanese Consulate a written statement of intention to retain Japanese nationality.³²

No official census of the number who did so is available. The Japanese consulates in the United States, however, have issued from time to time reports of the number of American-born children of Japanese parentage who still retain their Japanese citizenship, and the number

³¹Nationality Law of Japan, Article 20, Section 3, Regulations (Ordinance No. 26) of November 17, 1924, Flournoy and Hudson, *Nationality Laws*, pp. 385-387. See also *Foreign Relations of the United States*, 1924, Vol. 2; p. 412 (Note of Honorable Jefferson Caffrey, The Chargé in Japan to the Secretary of State); Mears, *Resident Orientals on the American Pacific Coast*, pp. 107-108.

³²See Mears, *Resident Orientals on the American Pacific Coast*, p. 108.

of such children who have renounced or otherwise lost their Japanese nationality. On the basis of statistics released in 1927 by the Consul General of Japan at San Francisco, it appears that over 51,000 of the approximately 63,700 American-born persons of Japanese parentage in the United States held Japanese citizenship.³³ A census of the Japanese in the United States conducted in 1930 under the auspices of the Japanese Government purported to disclose that approximately 47% of the American-born persons of Japanese parentage in California held Japanese citizenship.³⁴

An important aspect of dual citizenship was that the Japanese Government regarded all Japanese citizens as liable to military conscription and required them to apply for out-of-Empire deferment in order to avoid it.³⁵

Shintoism.—Another factor to be taken into account in considering the viewpoints and loyalties of the West Coast Japanese is the existence and nature of Shintoism. It seems to be accepted that the basic doctrine of Shinto is the apotheosis of, and reverence for, the Japanese Imperial Family, and that the Japanese Government has, since at least the middle of the 19th century, made it a primary function of government to spread belief in Shin-

³³See Mears, *op. cit. supra*, p. 429.

³⁴See Strong, *op. cit. supra*, p. 142.

³⁵See, e. g., military conscription notice appearing in *Rafu Shimpo* (Los Angeles Japanese language daily newspaper), October 11, 1941.

to throughout Japan.³⁶ As an amplification of the doctrine of the divinity of the Emperor, an attempt has been made in Japan to identify the extension of Japanese rule or influence as a sacred purpose.³⁷

While the force of Shinto in Japan as a source of stimulation for patriotism and loyalty to the Japanese Emperor cannot be doubted, the prevalence of Shintoism among the West Coast Japanese is a difficult factor to evaluate. For one thing, religious surveys do not show the number of its adherents since belief in Shintoism together with simultaneous belief in another religion is possible and common, and also because the Japanese Government has frequently maintained that Shintoism could not properly be classed as a religion.³⁸ However, there

³⁶See Yamashita, Yoshitaro (formerly chancellor, Imperial Japanese Consulate, London), *The Influence of Shinto and Buddhism in Japan*, Transactions and Proceedings of the Japan Society of London, Vol. 14, p. 257, quoted in D. C. Holton, *The National Faith of Japan* (1938); pp. 4-5; *Japan, Religion*, 15 Encyclopedia Britannica (11th Ed., 1911), p. 222; *Japan, Religion*, 12 Encyclopedia Britannica (14th Ed., 1936); pp. 926-927; *Shintoism*, 20 Encyclopedia Britannica (14th Ed., 1936), p. 504; M. Anesaki, *Shinto*, 14 Encyclopedia of Social Sciences (1935), p. 24; A. M. Young, *Rise of a Pagan State* (1939), ch. 6; A. M. Underwood, *Shintoism* (1934), ch. 9; D. C. Holton, *The Political Philosophy of Modern Shinto; A Study of the State Religion of Japan*, 49 Transactions of the Asiatic Society of Japan, Part II (1922), pp. 299-301; D. C. Holton, *Modern Japan and Shinto Nationalism* (1943), ch. 1, 2, and 3. For complete accuracy this form of Shinto is frequently termed State Shinto, since sects exist which emphasize reverence of others than the Emperor.

³⁷See D. C. Holton, *The National Faith of Japan* (1938), p. 289; Otto D. Tolischus, *Tokyo Record* (1934), pp. 13-16.

³⁸See Holton, *The National Faith of Japan* (1938), p. 290, *et seq.*

can be no doubt that at least those Japanese who were at any time in Japan were exposed to Shinto indoctrination. And it has been stated that there was an increase in Shintoism on the West Coast in recent years.³⁹

While Shinto doctrine was not originally a part of the Buddhist religion, Buddhism in Japan has accommodated itself to, and has aided in the indoctrination of State Shinto.⁴⁰ On the West Coast a substantial number of Japanese were Buddhists,⁴¹ and it has been stated that some of the Buddhist priests in the West Coast

³⁹ See Schrieke, *op. cit. supra*, p. 41.

While it is true that a 1936 census listed only one Shintoist Temple in Los Angeles (see, 1 Religious Bodies, 1936, Department of Commerce, Bureau of Census, 1941, p. 7), there were in 1941, according to directories published by the West Coast Japanese language papers, 28 Shinto shrines in California, 2 in Washington, and 2 in Oregon. (The New World Sun Year-Book for 1941, pp. 122, 112, 517, 319, 371, 279, 393, 190, 90, 497, 209, 612, 17, 492, 282, 629, 591; Japanese-American Directory (Nichibei Jusho Roku) for 1941, pp. 77, 82, 530, 268, 503, 232, 307, 156, 56, 177, 2, 429, 236, 549, 579). Some of these shrines, however may have been devoted to the practice of sects of Shinto other than State Shinto. As to the number of shrines in Los Angeles see also Japanese Telephone & Business Directory of Southern California, No. 29.

⁴⁰ D. C. Holton, *Modern Japan and Shinto Nationalism* (1943), pp. 124, 148-151. Compare Sir Charles Eliot, *Japanese Buddhism* (1935), pp. 179-196.

⁴¹ According to the 1936 survey, there were 65 Japanese clergymen, together with two deans and one bishop, connected with the Buddhist Mission of North America on the West Coast. The Mission had 31 churches in the three West Coast states, with 12,718 members, out of a total of 35 churches with 14,388 members in the United States as a whole. In connection with the Buddhist churches, some Japanese Language Schools of a religious nature were maintained (2 Religious Bodies, 1936, Department of Commerce, Bureau of Census, 1941, pp. 341-346).

communities also attempted to indoctrinate their congregations with Japanese nationalism.⁴²

Education of American-born children in Japan.—It has been estimated by the Tolan Committee that approximately 10,000 American-born children of Japanese parents had been sent to Japan for part or all of their education. See H. Rep. No. 1911, 77th Cong., 2d Sess., p. 16⁴³. Although some of them have doubtless become antagonistic towards the Japanese Government as a result of their visits,⁴⁴ this group of 10,000 is nevertheless regarded as containing some of the most dangerous elements in the Japanese community. H. Rep. No. 11, *supra*. Youths thus educated in Japan are essentially and culturally⁴⁵ Japanese, and it is probable that many of them are intensely loyal to Japan.⁴⁶ It is reasonable to assume that such students were inculcated with Japa-

⁴²See Millis, *op. cit. supra*, pp. 267-268. Thus, a Buddhist priest at a dedication ceremony of a new Temple, was reported in the Los Angeles Japanese language daily, Rafu Shimpo, for November 22, 1940, as suggesting to his audience that "We are the race of Yamato which has received and carried on the flesh and blood of our ancestors over a period of 2,600 years. Therefore, there is no necessity for us to give up our spirit to the United States merely because we have received a little education."

⁴³The foregoing report estimates that there are about 60,000 American-born Japanese who had not been sent to Japan. These estimates should be compared with a survey conducted by the San Francisco Chapter of The Japanese American Citizens League in October 1940 which disclosed that 22.8% of the second generation were American-born and had been to Japan. See Tolan Committee Hearings, p. 11151. See also *id.*, pp. 11199-11200.

⁴⁴See Tolan Committee Hearings, pp. 11220-11229.

⁴⁵Ichihashi, *op. cit. supra*, pp. 319-320.

⁴⁶*The Japanese in America, Harpers Magazine* (October 1942), pp. 489, 491, 492.

nese nationalistic philosophy and were exposed to the religious training which identifies the Emperor as a deity.⁴⁷

Japanese Language Schools on the West Coast.—A further potential influence on the Japanese on the West Coast were the Japanese language schools. It has been stated that there were 248 such schools with 19,000 pupils in Southern California at the outbreak of the war,⁴⁸ that there were 14 schools in Oregon and 9 in Seattle, Washington.⁴⁹ The sessions at these schools were held outside the regular hours of the public schools.⁵⁰

Although it has been suggested that the children were sent to these schools so that they might more easily converse with their parents⁵¹ and because of increased employment opportunities in Japanese firms,⁵² it nevertheless appears likely that the schools may have afforded a convenient medium for indoctrinating the pupils with Japanese nationalistic philosophy. There is evidence that

⁴⁷ See Holtom, *Modern Japan and Shinto Nationalism*. (1942), pp. 6-7, 26, which indicates that religious training is an integral part of the Japanese educational program. Not only does such education stress the national character of Japan, but it focuses upon the divinity of the Imperial Family. See Holtom, *The National Faith of Japan* (1938), pp. 79-85, 125, 131-138.

⁴⁸ Statement in the *Los Angeles Times* of January 23, 1942, quoted in Report on Japanese Activities, Appendix 6 to Hearings before a Committee on Un-American Activities, House of Representatives, 77th Cong., 1st Sess., p. 1894.

⁴⁹ Tolan Committee Hearings, pp. 11393, 11394; see also pp. 11348, 11338, 11702.

⁵⁰ See Mears, *op. cit. supra*, p. 358; Tolan Committee Hearings, pp. 11145, 11223.

⁵¹ See Tolan Committee Hearings, p. 11145.

⁵² See Mears, *op. cit. supra*, p. 358; Strong, *op. cit. supra*, p. 203; Tolan Committee Hearings, pp. 11144-11145, 11222-11223.

the textbooks used at these schools were printed in Japan,⁵³ and that the Japanese Government assisted the schools both financially and by sending teachers from Japan.⁵⁴

Japanese Organizations.—There is evidence that the Japanese in this country were highly organized, and that many of the local associations were part of an integrated structure dominated by The Japanese Association of America which had been organized under the guidance of the Japanese Consulate.⁵⁵ Moreover, there were numerous other Japanese organizations which maintained close ties with Japan.⁵⁶ Whatever may be the full significance of these organizations, it is apparent that they probably tended to stimulate cohesiveness and social solidarity of the Japanese community and that they offered the Japanese Consulate a means at least for the dissemination of propaganda.

⁵³See *Los Angeles Times*, cited in footnote 48 *supra*.

⁵⁴See *Un-American Activities in California* (Report to California legislature 1943), pp. 327-328. Cf. Tolan Committee Hearings, p. 11637.

⁵⁵See Tolan Committee Hearings, p. 10975, *et seq.*; Beikoku Chuo Nihonjin Shi (History of the Central Japanese Association of America) edited by Shiro Fujioka (published in Tokyo in 1940), pp. 15, 170, 171, 175, 191; 303-304; cf. Mears, *op. cit. supra*, p. 342.

⁵⁶For example, Heimusha Kai, The Society of Men Eligible For Military Duty, was listed as having 15 branches in California by The New World Sun Year-Book for 1941. As to its activities and relationship to Japan, see Zaibei Nihonjin Shi (History of Japanese Residents in the United States) published by Zaibei Nihonjin Kai (Japanese Association of America) in Tokyo, 1940, p. 672.

APPENDIX "D."

Act Permitting Quiet Title Actions Against the State in Cases of Possible Escheat. Statutes of 1945, Chapter 1363 (Effective Sept. 15, 1945).

An act to add Section 738.5 to and amend Section 407 of the Code of Civil Procedure, relating to actions to determine conflicting claims to property.

The people of the State of California do enact as follows:

Section 1. Section 738.5 is added to the Code of Civil Procedure, to read:

738.5. An action may be brought against the State of California to determine whether or not an escheat has occurred as to any real property or interest therein under the provisions of "An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this State, providing for escheats in certain cases, prescribing the procedure therein, requiring reports of certain property holdings to facilitate the enforcement of this act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith," approved by the electorate November 2, 1920, and as amended. Such an action may be commenced by any person claiming an interest in the property. The complaint shall describe the property and shall specify the instrument or instruments in the chain of title to the property which gave rise to the possibility of

such escheat. The State of California shall be the sole defendant in such action and no other matter may be adjudicated except the issue of the occurrence of an escheat. No issue shall be raised or claim made by the plaintiff in such action based upon estoppel, or failure of the State to have commenced an escheat proceeding, nor shall any statute of limitation operate to bar an adjudication in such action that the property or any interest therein has escheated to the State. A copy of the complaint and summons shall be served upon the Attorney General or his assistant, or any of his deputies, and upon the district attorney or county counsel of the county in which the property is situated, or upon their respective assistants or deputies. Such district attorney or county counsel shall perform duties similar to those required to be performed in escheat proceedings commenced by the State under the provisions of the act mentioned in this section. The Attorney General or district attorney or county counsel shall have 180 days, as a matter of right, in which to answer or otherwise plead. If at any time during the pendency of the action the Attorney General determines that under the law or the facts or both no such escheat has occurred, he may, with the consent of the State Controller, file a disclaimer in such action and thereupon judgment shall be entered against the State.

Sec. 2. Section 407 of the Code of Civil Procedure is amended to read:

407. The summons must be directed to the defendant, signed by the clerk or justice, and issued under the seal of the court. It must contain:

1. The title of the court in which the action is brought, the name of the county in which the complaint is filed and, in municipal and justices' courts, the name of the city, town, or judicial township in which such court is established;
2. The names of the parties to the action;
3. A direction that the defendant appear and answer the complaint within 10 days, if the summons is served within the county in which the action is brought, or within 30 days, if served elsewhere, except that if the action is against the State pursuant to Section 738.5 of this code, within 180 days;
4. A notice, that unless the defendant so appears and answers, the plaintiff will take judgment for any money or damages demanded in the complaint as arising upon contract, or will apply to the court for any other relief demanded in the complaint.

IN THE
Supreme Court of the United States
OCTOBER TERM 1946

No. 1639

FRED Y. OYAMA and KAJIRO OYAMA,
Petitioners,
vs.
STATE OF CALIFORNIA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

**BRIEF OF AMERICAN CIVIL LIBERTIES UNION
AS *AMICUS CURIAE***

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae.

NANETTE DEAMBITZ,
EDWARD J. ENNIS,
OSMOND K. FRAENKEL,
WALTER GELLHORN,
ARTHUR GARFIELD HAYS,
Of the New York Bar,
RUBEN OPPENHEIMER,
Of the Maryland Bar,
HAROLD EVANS,
Of the Pennsylvania Bar,
of Counsel.

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**BRIEF OF AMERICAN CIVIL LIBERTIES UNION,
*AMICUS CURIAE***

Interest of American Civil Liberties Union

The American Civil Liberties Union hereby requests this Court to permit it to participate as *amicus curiae* in the instant case. The American Civil Liberties Union holds as one of its prime objectives the elimination of racial discrimination and it believes that the case at bar involves a highly significant instance of such discrimination.

Summary of Case

By a judgment of October 31, 1946, the Supreme Court of California affirmed the grant of a petition by the State

of California for a declaration of the escheat to the State of California of land held by petitioners (R. 121, 65-67). The basis for the escheat was the conclusion that petitioner K. Oyama had owned, possessed and used the land in violation of the Alien Land Law of California¹ (R. 117, 61). Such law prohibits the ownership or use of land by aliens ineligible to citizenship, and provides for escheat in the case of violation of this prohibition. Petitioner K. Oyama is admittedly an alien of Japanese origin and was and is thus ineligible to citizenship under the Federal statute respecting naturalization, both as such statute existed at the time of the purchase and as it exists at the present time. Aside from the individual characteristics required for naturalization, eligibility has been and is based upon ethnic origin. At present, as a result of recent amendments liberalizing the naturalization statute, the only ethnic group whose members reside in this country in a substantial number and are ineligible for naturalization, is the Japanese.²

In addition to various arguments of State law, the petitioners argued that the Alien Land Law under which the land escheated was, because of its purpose, effect and application, an unconstitutional racial discrimination.

1. Alien Property Initiative Act of 1920, California Stats. 1921, p. lxxxiii, as amended; 1 Deerings' Gen. Laws, Act 261.

2. The ethnic groups to which naturalization was limited prior to amendment of the statute in 1943 were "white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere" (Law of Oct. 14, 1940, c. 876, Title I, Subchap. III, §303, 54 Stat. 1140); the statute at present also permits naturalization of "Chinese persons or persons of Chinese descent and persons of races indigenous to India" as well as "descendants of races indigenous to the continents of North or South America or adjacent islands and Filipino persons or persons of Filipino descent". (United States Code, Title 8, Sec. 703). While members of some races indigenous to the Eastern Hemisphere other than the Japanese continue to be excluded from citizenship, there are no substantial number of persons of such other races in the United States. In addition to ineligibility on racial grounds, aliens may of course be ineligible on the basis of their individual conduct, that is, for example, deserters from the army or draft evaders are ineligible (See United States Code, Title 8, Sections 704 to 707).

under the Fourteenth Amendment to the Constitution of the United States.³ The California Supreme Court, relying on decisions of this Court, rejected this argument and held that the Alien Land Law did not violate the Constitution of the United States. One Justice concurred in the judgment stating: "I concur in the judgment on the ground that the decisions of the United States Supreme Court cited in the main opinion are controlling until such time as they are reexamined and modified by that court." (R. 120).

3. It was assumed by petitioners and it is here assumed by *amicus* that the racial discrimination practiced by the Federal Government with respect to naturalization is constitutional. It is generally so considered on the ground that naturalization is a privilege which the Federal Government has no obligation to confer, but can confer or withhold arbitrarily on racial or any other bases. This rationale does not of course apply to a denial to aliens of the use of land because such use is a right protected by the due process and equal protection clauses of the Fourteenth Amendment. See *Terrace v. Thompson*, 263 U. S. 197; *Porterfield v. Webb*, 263 U. S. 225, which recognized this principle, but which, we shall maintain, did not correctly apply it.

ARGUMENT IN SUPPORT OF PETITION

The petition should be granted because the Supreme Court of the State of California has erroneously decided an important issue under the Constitution of the United States.

1. This Court's review of the California court's decision upholding the California Alien Land Law is of especial importance because of (A) The current campaign to enforce it against Japanese aliens and American citizens of Japanese descent; (B) The wartime program of discrimination against persons of Japanese ancestry, to which such campaign is an aftermath; (C) The California court's reliance on decisions of this Court which should be overruled; and (D) The United Nations Charter provision respecting racial distinctions.

(A) After a period of a decade or more of disuse of the Alien Land Law,⁴ the California Legislature appropriated in 1943 the sum of \$200,000 for its enforcement against Japanese aliens and citizens of Japanese ancestry, and sixty or more escheat cases against persons of Japanese descent are pending in the California courts. The current program of enforcement against this ethnic group was initiated as part of the movement to dispossess permanently as many as possible of the Japanese residents who had been evacuated from California in 1942 in the Government's mass evacuation of all persons of Japanese ancestry.⁵ The question of whether such evacuation, which was upheld by this Court as an emergency war measure,⁶ may be extended into a permanent dispossession

4. See *Wartime Handling of Evacuee Property*, U. S. Department of Interior, War Relocation Authority (U. S. Govt. Printing Office), p. 8.

5. See Report on Japanese Resettlement by Fact-Finding Committee of California State Senate, published May 1, 1945.

6. *Korematsu v. United States*, 323 U. S. 214.

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is an urgent one since the evacuees have been released from wartime restrictions and are seeking to recover their homes.

(B) The constitutionality of the Alien Land Law is of great current significance from a broader aspect as well. This law was enacted as an anti-Oriental, and primarily as an anti-Japanese, measure. Its purpose was "to reserve the State for American labor and American landlords," "to keep out people we don't want, particularly the Japanese," and to express "the feelings of the people of the coast towards Orientals". The phrase "ineligible to citizenship" was merely a convenient method of designating the racial group.⁷ The law has been enforced by the State of California throughout its history, and it is now being enforced, solely against persons of the Japanese race. And even without considering the facts extrinsic to the terms of the statute showing the impact of the law on the Japanese race, it is to be noted that whether or not the Alien Land Law affects an alien necessarily depends upon his race since eligibility to citizenship so depends.

7. Statement of California delegation to Congress, quoted in Fresno (California) Republican, May 15, 1913.

8. Statement of State Senator Anthony Caminetti, one of sponsors of the law, quoted in Fresno Republican, April 22, 1913.

9. Statement of Governor of California upon signature of Alien Land Law, quoted in Fresno Republican, May 15, 1913.

10. That the law was passed because of opposition to the Japanese entering and settling in California, rather than because of concern with their citizenship status, has at all times been admitted, and in fact asserted, by the sponsors and proponents of the Alien Land Law, and is beyond doubt. See argument of Attorney General for the State of California in *Porterfield v. Webb*, 263 U. S. 225, 229; *Estate of Yano*, 188 Cal. 645, 658, 206 Pac. 995, 1001. See also Fourth Interim Report of the Select Committee Investigating National Defense Migration of the House of Representatives, House Report No. 2124, 77th Cong. 2nd Sess., pp. 72-85; McWilliams, Prejudice (1944), 45-66; Konvitz, The Alien and Asiatic in American Law (1946), 158-159. The Japanese succeeded the Chinese as a subject for political capital in California. *Fourth Interim Report*, and McWilliams, loc. cit.; Pajus, The Real Japanese California (1937), 167; Mears, Resident Orientals on the American Pacific Coast (1927), 398; Treat, Japan and the United States (1928), 281.

Because "racism is far too virulent today",¹¹ because of its disruptive force in a democracy, and particularly because of this Court's countenancing of racial discrimination in the *Korematsu* and *Hirabayashi* decisions,¹² this Court's expression of opinion on the Alien Land Law is of great importance. This Court must insure the effectuation of its declaration in those decisions that racial discrimination, never upheld by this Court prior to those cases, is justifiable only on the basis of a grave emergency and is not to be increasingly and generally condoned.

(C) The California Supreme Court's opinion countenancing the racial distinction involved in the Alien Land Law, was based on decisions of this Court. Such decisions, as we shall show below, should be reconsidered and overruled because of their inconsistency with doctrines this Court has developed in the interim since their promulgation. Thus, review of the California decision seems essential to the proper discharge of this Court's functions.

(D) Not only is this Court's review in the instant case important from the standpoint of the development of law in the United States, but it is also important from an international viewpoint. For the United Nations Charter asserts that "the United Nations shall promote * * * universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race * * *".¹³ Thus the Court should

11. Justice Murphy concurring in *Steele v. Louisville & Nashville R. R. Co.*, 323 U. S. 192, 208-209.

12. *Korematsu v. United States*, 323 U. S. 214; *Hirabayashi v. United States*, 320 U. S. 81.

13. Article 55c, United Nations Charter, ratified by the United States, August 8, 1945, United States Treaty Series (State Dept., 1946) No. 993. Article 56 states: "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

review the instant California decision not only to determine whether the United States Constitution has been correctly interpreted, but also to determine whether our treaty obligation has been observed.¹⁴

The international effect of the assertion in the Charter will depend in part upon the determinations of the courts of the United States on matters of race; for such determinations will serve as examples and precedents in other Nations and before international tribunals with respect to the interpretation and effectuation of the Charter provision.¹⁵ The fact that the ethnic group here involved consists in part of aliens would tend to make the instant proceeding particularly noteworthy internationally.

2. The decision of the Supreme Court of the State of California is erroneous and the decisions of this Court on which it relied should be overruled.

This Court upheld the California Alien Land Law in 1923 in *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313 and *Frick v. Webb*, 263 U. S. 326, all of which in turn relied upon *Terrace v. Thompson*, 263 U. S. 197. The law of the State of Washington in issue in the *Terrace* case prohibited land ownership by any alien who had not declared his intention to become a citizen and was not restricted to aliens eligible for citizen-

14. A State law inconsistent with a treaty obligation is invalid. Constitution, Art. 21; *United States v. Pink*, 315 U. S. 203; *Missouri v. Holland*, 252 U. S. 416.

It is to be noted that the Charter provision has been given effect by the Supreme Court of Ontario in a decision invalidating a covenant prohibiting the sale of property to Jews. *In Matter of Drummond W'ren*, Ontario Reports, 1945, p. 778.

15. See *Nielsen v. Johnson*, 279 U. S. 47, 52; compare *Paquete Habana*, 175 U. S. 677; *The Antelope*, 16 Wheat. (U. S.) 66; *Great Britain (The Cayuga Indians Claim) v. United States*, United States-Great Britain, Claims Arbitration, 1926, Report of Fred K. Nielsen (American Agent), American and British Claims Arbitration, p. 307; see Lauterpacht, *Decisions of Municipal Courts as a Source of International Law*, 10 (1929), British Year-book of International Law 65.

ship. While this law was, like the California law, anti-Oriental in purpose and effect, since Orientals were the most substantial class of aliens in the State of Washington who were unable under Federal law to declare such intention, the Court, by Mr. Justice Butler, was able to ignore this aspect of the law because of its broad phraseology.¹⁶ Mr. Justice Butler dismissed the question of a violation of the due process clause by stating that it was not violated by a law "applying alike and equally to all aliens" (263 U. S. at p. 218); and as to equal protection he stated:

"Appellant's contention that the state act discriminates arbitrarily against * * * ineligible aliens because of their race and color is without foundation. All persons of whatever color or race who have not declared their intention in good faith to become citizens are prohibited from so owning agricultural lands" (263 U. S. at p. 200).

When the California Alien Land Law came before the Court, the facts that its prohibition on land ownership or use was directed solely at aliens ineligible for citizenship and that the Attorney General for the State of California made it clear in argument that it was anti-Oriental in purpose were cursorily dismissed.¹⁷ The Court, again by Mr. Justice Butler said in the *Porterfield* case:

"There (in *Terrace v. Thompson*) the prohibited class was made up of aliens who had not in good

16. This was despite the fact that counsel for the State of Washington argued in support of the law that "in the field of agriculture the American and Oriental cannot compete" and if not for the law the people of the State might "become entirely dependent upon alien races". See Summary of argument, 263 U. S. at 209.

17. The unconstitutionality of the Law in so far as it affects petitioner Fred Oyama, the American citizen son of K. Oyama, is fully developed in the petition for certiorari. We are therefore only here considering the unconstitutionality of the Law from the standpoint of its basic prohibition, regardless of whether alien or citizen is affected thereby.

faith declared their intention to become citizens. The class necessarily includes all ineligible aliens and in addition thereto all eligible aliens who have failed to so declare. In the case now before us the prohibited class includes ineligible aliens only. In the matter of classification, the States have wide discretion * * *. We cannot say that the failure of the California Legislature to extend the prohibited class so as to include eligible aliens who have failed to declare their intention to become citizens of the United States was arbitrary or unreasonable."

Such a superficial and unconsidered approach to a question of racial discrimination is not in accord with the recent decisions of this Court. And in view of this Court's knowledge of the purpose and effect of the California Alien Land Law, its general awareness of the problem of racism, and its specific knowledge and awareness of this problem in relation to the West Coast Japanese, it cannot close its eyes to the fact that the California Alien Land Law in its purpose, effect and application discriminates against persons on a racial basis and particularly against those of the Japanese race. Whether a law discriminates by explicit terms against a racial group or is more subtle in its phraseology is immaterial. See *Lane v. Wilson*, 307 U. S. 268; *Hill v. Texas*, 316 U. S. 401; *Norris v. Alabama*, 294 U. S. 591.

For "all legal restrictions which curtail the civil rights of a single racial group are immediately suspect * * * courts must subject them to the most rigid scrutiny"; and racial discrimination is justified only "under circumstances of direst emergency and peril". *Korematsu v. United States*, 323 U. S. 214, 216, 220. See also *Hirabayashi*

v. *United States*, 320 U. S. 81; *United States v. Carolene Products Co.*, 304 U. S. 144, 152.

To put the import of this Court's decisions on racial discrimination in terms of presumptions, there is, instead of the usual presumption in favor of statutory validity, a strong presumption against the validity of a racial discrimination and this presumption can only be overcome by a showing of urgent necessity therefor.¹⁸ Thus the Supreme Court of California was in error in relying on the decisions of this Court which were not based on a rigid scrutiny of the necessity for the racial discrimination (R. 114-115) and in deciding that "it is sufficient if a rational basis is found for the classification" contained in the Alien Land Law (R. 117).

The grounds to which the Supreme Court of California adverts as justification for the Alien Land Law are, we submit, far insufficient to justify the racial discrimination involved therein and can not in fact even be deemed to furnish a "rational basis" for it. The California Court relies in part on a previous decision in which it stated that the farming of land by ineligible aliens would cause citizens to be deprived of its use and that "racial distinctions may furnish legitimate grounds for classifications under some conditions of social or governmental necessities" (R. 114). This justification for the discrimination must, it would seem, be rejected out of hand. For the State may not prefer persons of one race to those of another with respect to the use of land, nor is the use of land a privilege which may be arbitrarily granted to citizens as opposed to aliens; even the previous decisions of this Court on the Alien Land

18. Compare the treatment of statutes involving rights "vital to the maintenance of democratic institutions" (*Schneider v. Irvington*, 308 U. S. 147, 161), other than the right to racial equality, in the *Schneider* case; *Thornhill v. Alabama*, 310 U. S. 88, 95; *West Virginia State Bd. of Education v. Barnette*, 319 U. S. 624, 639; and in *Thomas v. Collins*, 323 U. S. 516, 527, 529-532.

Law recognized that the use of land is a right protected by the due process clause which can only be affected for the public welfare.

In the other justification relied on by the Supreme Court of California in support of the Alien Land Law, it followed this Court's 1923 decisions with regard thereto: it relied on the connection between the prohibition imposed by the law and the State's interest in the use of land by those upon whose allegiance and interest it could rely. We maintain that this connection would not even justify a law prohibiting land use by all aliens or by all non-declarant aliens, a stronger case than that at bar, where the purpose of the law, its potential effect, and its application were racial. For this speculative reasoning as to the effect of alien land use on the strength of the State, as against the actualities as to the loyalty of aliens¹⁹ and the methods of dealing with alien enemies in war-time, does not disclose a sufficient danger to the State to justify a racial discrimination. But even assuming that the State's interest in land-holding exclusively by citizens or declarant aliens were sufficient to justify a racial discrimination imposed to advance this interest, the California law is nevertheless unconstitutional.

For the California law prohibits land-holding by ineligible aliens while it permits it by other non-declarant aliens. Yet, to argue that the loyalty of an alien ineligible to citizenship is less than that of an alien eligible for citizenship who has not attempted to attain it would be mere sophistry; in fact, the opposite would appear to be true. Thus, even on the basis of the narrow scope assigned to the equal protection clause, and even apart from the special scrutiny required with respect to a law establishing

19. See *Ex parte Kawato*, 317 U. S. 69, 73.

a racial discrimination, the California law must be invalidated. For by prohibiting land use by ineligible aliens and permitting it by other non-declarant aliens, California has struck at a class which is not distinguishable from another on even "a rational basis". Thus it is not attacking an evil which is greater or more urgent than another (*Hirabayashi v. United States*, 320 U. S. 81, 101), but arbitrarily singling out one aspect of an alleged evil. In any event, even if the distinction between ineligible aliens and other non-declarants were sufficient to justify a prohibition aimed solely at the former under ordinary equal protection tests, the distinction is insufficient to justify such prohibition where it effects a racial discrimination.

The decision of the Supreme Court of California is erroneous under the Constitution both because the factual showing as to the danger to the State arising from land use by non-citizens is insufficient to justify a racial discrimination and because there is an insufficient factual showing as to the danger arising from the class of non-citizens upon whom the prohibition is imposed as distinguished from other non-citizens.²⁰

20. It is to be noted that the standard established as an objective by the United Nations Charter appears to be a more stringent one than that required by the Constitution, in that no discrimination between racial groups, regardless of factual justification, would seem to be condoned by the Charter provision. However, it can be argued that the Charter does not impose the objective of no racial distinction as a rigid, standard; since Article 55 merely speaks of the United Nations "promoting" this objective.

CONCLUSION

**It is respectfully submitted that the petition for a
writ of certiorari should be granted.**

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION,
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FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 1059

11

FRED A. OYAMA and KAJIRO OYAMA,

Petitioners.

vs.

STATE OF CALIFORNIA.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI BY NATIONAL LAWYERS GUILD,
AMICUS CURIAE.

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IN THE
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No. 1059

FRED Y. OYAMA and KAIRO OYAMA,

Petitioners,

vs.

STATE OF CALIFORNIA.

**BRIEF IN SUPPORT OF PETITION FOR CERTIORARI BY NATIONAL LAWYERS GUILD,
AMICUS CURIAE.**

Introductory Statement.

The National Lawyers Guild, a national association of lawyers, and its Los Angeles Chapter, composed of members of the bar of California, by leave of court present this brief *amicus curiae*, in support of the petition for writ of certiorari in this case. The Guild is interested primarily in the constitutional questions presented and the question of racial discrimination from which such constitutional questions arise. Some of counsel for this *amicus curiae* have appeared for and are representing certain Negro defendants in cases which have been submitted and are now pending before the Supreme Court

of the State of California in actions brought to enforce racial covenants against their occupancy of real property.*

We are concerned, in the instant case, with the fact that the Supreme Court of California premised its judgment affirming escheat of real property belonging to the citizen Fred Y. Oyama, on essentially "racist" grounds, resting in turn upon rulings of this court in several cases.**

The purpose of this brief is to assist in what we conceive is now this court's duty—to re-examine those decisions. We believe that the acceptances underlying them are founded on error, unconsidered assumptions of fact, and on unnoticed errors in reasoning.

It is true that racial antagonisms, rejected blood myths, and the legends clustered about the concept of race cannot furnish a court grounds for decision. The tide of

**In re Laws*, Crim. No. 7698, original *habeas corpus* proceeding before the Supreme Court, to prevent enforcement of contempt judgments for violating civil injunction by continued occupancy of their own home. *Hester, et al. v. Barbe, et al.*, L. A. No. 19589 (consolidated with actions L. A. Nos. 19588, 19590, 19591, 19592, 19593, and 19594; in all of said actions injunctions were granted against appealing Negro defendants, enforcing racial covenants against their occupancy of homes that they had purchased). *Anderson v. Auseth*, L. A. No. 19759, wherein eight civil injunction actions against numerous Negro defendants, premised on racial covenants restricting occupancy of their property, were consolidated for trial, and wherein judgment went for defendants upon the trial court's order excluding evidence, based upon his stated opinion: "This Court is of the opinion that it is time members of the Negro race are accorded without reservations and evasions the full rights guaranteed them under the 14th Amendment to the Federal Constitution. Judges have been avoiding the real issue for too long. Certainly there was no discrimination against the Negro race when it came to calling upon its members to die on the battlefields in defense of this country in the war just ended." * * *

**See cases cited by the California Supreme Court, R. 113 *et seq.* and language of the Court, R. pp. 117 and 119.

prejudice recedes, and the judicial record which rode that tide remains forever a rejected relic of yesterday's prejudices. We recognize, however, that mere good wishes may prove an insufficient weapon with which to confront a State Constitution, legislative enactments, and decisions of the highest tribunal in the land. Accordingly, we believe that this court is entitled to have, not anthropology, not impassioned persuasion, not a war message, nor even a sermon, but a basis founded on law and reason for a just decision. This brief will seek to offer such a basis.

The California Alien Land Law as Applied Violates the Fourteenth Amendment to the Constitution.

State legislation which discriminates against a class of persons violates the Fourteenth Amendment unless there is a reasonable relationship between the qualities which distinguish the class, the discriminations imposed, and the evil sought to be avoided by the State.

It is of first importance therefore to have clearly in mind these things: the nature of the class, and the nature of the discrimination.

If in fact there is a reasonable relationship between the class, the discrimination, and a justifiable end, the legislation is not subject to attack for violating the Fourteenth Amendment. But if it does not meet that test, constitutional precepts join with natural sentiments in overthrowing it.

In the present case the class includes: "all aliens other than those" (Act 261, Deering's General Laws, Sec. 2) "eligible to citizenship." (*Id.*, Sec. 1.)

The discrimination against members of this class is to deprive them of the right to "acquire, possess, enjoy, use,

—4—

cultivate, occupy (or) transfer real property, or any interest therein * * *" or to "have in whole or in part the beneficial use thereof * * *." (*Id.*, Sec. 2.)

We contend that the class created by the statutes has no qualities peculiar to it which bear any logical relationship toward any end which the State may, under the Fourteenth Amendment, seek to accomplish.

ATTRIBUTES OF VALID CLASSIFICATION.

Without burdening the court with the obvious, it is worth while to note the rules which distinguish reasonable, and thus valid, classification from arbitrary classification, which is void.

"Arbitrary" classification is consistently condemned. This classification groups persons together by some distinguishing characteristic which, however, has no reasonable connection with the purpose professed to be served by the discrimination.

"Such a classification is not based on anything having relation to the purpose for which it is made."

Smith v. Cahoon, 283 U. S. 553, 72 I. Ed. 1264, 1274.

In *Martin v. Superior Court*, 194 Cal. 93, 227 Pac. 762, the California Supreme Court well stated the rule:

"If the law is to bear equally upon all persons, the legislature must classify whenever there exists a reason which may rationally be held to justify a diversity of legislation."

* * * * *

"The classification, however, must not be arbitrarily made for the mere purpose of classification, but

must be based upon some distinction, natural, intrinsic, or constitutional, which suggests a reason for and justifies the particular legislation. That is to say, not only must the class itself be germane to the purpose of the law but the *individual components of the class must be characterized by some substantial qualities or attributes which suggest the need for and the propriety of the legislation.*" (Our emphasis.)

This Court follows the same rule. In *Atchison, Topeka & Santa Fe v. Mathews*, 174 U. S. 96, 43 L. Ed. 909, it was said:

"Even where the selection is not obviously unreasonable and arbitrary, if the discrimination is based upon matters which have no relation to the object sought to be accomplished, the same conclusion of unconstitutionality is affirmed."

In *Metropolitan Casualty Insurance Company v. Brownell*, 294 U. S. 580, 79 L. Ed. 1070, Justice Stone says:

"The ultimate test of validity is not whether foreign corporations differ from domestic, but whether the differences between them are pertinent to the subject with respect to which the classification is made." (L. Ed. 1072.)

It must be observed that even in arbitrary classification the distinguishing characteristics exist in fact. It is by them that the members of the class are identified for discrimination. The arbitrary nature of the classification is exposed in the next step in the process—the lack of *facts*, inherently attributable to each member of the class, which could justify the discrimination.

CHARACTERISTICS OF THE DISCRIMINATED CLASS.

It is important to observe that the class of "ineligible aliens" is created by legislative fiat, congressional act.

In this respect it is to be distinguished from most frequent bases for classification. Imposition of specific benefits or burdens because of age, sex, or competency, to take the clearest examples, are frequent. In such a case the classification is based on qualities inherent in its members, and the fact, characteristic, or quality on which the classification is based is true of every member of the class.

The State of California may seek to evade the position that the class of ineligible aliens is created by arbitrary congressional act. It may assert that the class is based on physical, psychological, or other characteristics of the group. This it can do only by looking to the bases for the congressional classification. It is of course true that Congress distinguished eligible from ineligible aliens by means of national origins. But discrimination in rights relating to real property based on national origins would plainly render the legislation void. The power of Congress to admit to citizenship is not subject to the constitutional measures which restrict the State's power to discriminate among persons in their rights to real property.

There are no alternatives. The State must adopt one of two positions on this question. Either the class of persons discriminated against, ineligible aliens, is based on the *facts* underlying the naturalization laws, that is, national origins; or the class of discriminated persons is created solely by legislative fiat, that is, ignoring the

national origin of the members of the class and any characteristics, physical or mental, real or pretended, inherent in the particular national group selected by Congress for exclusion from citizenship.

If the State asserts the first position, no further argument is necessary, because such bases for classification would render the act unconstitutional.

Buchanan v. Warley, 245 U. S. 60, 62 L. Ed. 149;

Yick Wo v. Hopkins, 118 U. S. 356, 30 L. Ed. 220;

Korematsu v. U. S., 323 U. S. 239, L. Ed.;

In re Opinion of the Justices, 207 Mass. 601, 94 N. E. 558, 34 L. R. A., N. S. 604;

Quan Hing Sun v. White, 254 Fed. 402;

Chaires v. Atlanta; 164 Ga. 755, 139 S. E. 559, 55 A. L. R. 230.

Congress may arbitrarily select and exclude for purpose of citizenship.

Fong Yue Ting v. U. S., 149 U. S. 698, 37 L. Ed. 905;

Fok Young Yo v. U. S., 185 U. S. 296, 46 L. Ed. 917;

U. S. v. Wong Kim Ark, 169 U. S. 649, 42 L. Ed. 890, 897.

But California's power to select and exclude for purpose of real property rights must not be arbitrary. Can California increase its powers by the device of adopting

the congressional classification? Can California escape the Fourteenth Amendment by hinging its legislation to this congressional power which is not subject to the amendment? We submit the Constitution is not so insubstantial; the Fourteenth Amendment will not be swung aside so easily.

The class of ineligible aliens includes persons to whom Congress has denied the right of citizenship. It may include persons who do not wish to become citizens, but this is not the distinguishing characteristic of the class. Denial of rights in real property to persons who do not want to become citizens would be founded on fact, not on fiat, and might well be sustained. *But the class of ineligible aliens under this statute is not that class.*

It is certainly a fact within judicial knowledge that among ineligible aliens are many whose dearest wish it would be to become citizens. While the desire to become a citizen is not the distinguishing characteristic of this class, the fact that many do want to be citizens should be borne in mind in considering the class of ineligible aliens. The distinguishing characteristic of ineligible aliens is this: These are the people who, without regard to their loyalties in fact, without regard to their wishes, capacities and longings, these are the people who cannot become citizens.

THE NATURE OF DISCRIMINATION.

It is absolute. No language is available to make the exclusion more complete. It is not merely a denial of the right to acquire title by certain means, as is true in some states. Ineligible aliens may not get property, may not hold it, may not occupy it, use it, or transfer it.

The prohibiting language undermines any pretense at reason.

Ownership is the aggregate of all possible uses.

"Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it. . . . Property consists of the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land (1 Cooley's Bl. Cm. 127)."

Buchanan v. Warley, 245 U. S. 60, 62 L. Ed. 149, 161.

No contention is here made that *some* uses allowed to citizens may not be prohibited to aliens. On the other hand, no one would dare to contend that all uses to which land may be put are evil solely because of the person whom such uses benefit. But this is exactly what this statute seeks to accomplish.

If motive were in dispute it would be worth pointing out that no critical analysis of motive could be more revealing than the sweeping prohibitions of this statute. So far as this court's duties are concerned, it is sufficient to note that it is not uses which are aimed at, but persons.

Abuse of land by any person, citizen or alien, can be prevented. This can be accomplished by distinguishing abuse from use, without discriminating against persons. For example, placer mining is an evil in some parts of California because of injury to land. Contour plowing could conceivably be required in hilly country to avoid waste of land by erosion. Pollution of streams is now forbidden. Other good and bad uses properly subject to

control can easily be brought to mind. These are not in question. The State is not aiming at abuses. *Any use whatever* by an "ineligible alien" is forbidden. No reasonable connection between a proper purpose and the means employed can be conjured up.

In *In re Opinion of the Justices*, 207 Mass. 601; 94 N. E. 558, the court distinguished between legislation aimed at abuses and legislation aimed at a class of people. A proposed law would have excluded girls and young women from restaurants and hotels operated by Chinese; on certification from the legislature, the Supreme Court of Massachusetts said that such a law would be unconstitutional. The following is from the opinion:

"The business of keeping a hotel or restaurant, to which the proposed legislation relates . . . may be conducted legally or illegally, by a person of any nationality. The proposed law, without reference to the way in which it is conducted, puts a restraint upon it which might be expected very seriously to interfere with the successful management of it, whenever it is carried on by a person of any particular nationality, which is not put upon it when it is carried on by a person of any other race and nationality."

This proposed legislation does not assume to forbid anything that is necessarily evil in itself, or to deal directly with any offense against order, decency or morality. There are good hotels and bad hotels, good restaurants and bad restaurants, kept by men of the Caucasian race, and there are others of both kinds kept by men of other races. This legislation does not refer to the character or condition of the hotel or restaurant that a young woman may not enter, but refers only to the nationality of the person who conducts it. The enactment of such legislation is not a proper exercise of the police power. It has

no direct relation to the evil to be remedied. It forbids the entry of a young woman into the hotel or restaurant of a Chinese proprietor, even if it is a model of orderly and moral management, and it permits the entry of young women into a hotel or restaurant kept by an American, when it is known to be maintained in part for the promotion of immoral or criminal practices. . . . ”

So, in *Buchanan v. Warley, supra*, the same distinction:

“True it is that dominion over property springing from ownership is not absolute and unqualified. The disposition and use of property may be controlled, in the exercise of the police power, in the interest of the public health, convenience, or welfare. Harmful occupations may be controlled and regulated. Legitimate business may also be regulated in the interest of the public. Certain uses of property may be confined to portions of the municipality other than the residence district, such as livery stables, brick-yards, and the like, because of the impairment of the health and comfort of the occupants of neighboring property. Many illustrations might be given, from the decisions of this court and other courts, of this principle, *but these cases do not touch the one at bar*:

“The concrete question here is: May the occupancy, and necessarily, the purchase and sale of property of which occupancy is an incident, be inhibited by the states, or by one of its municipalities, solely because of the color of the proposed occupant of the premises? . . . ”

The question stated was answered in the negative.

See, also:

State v. Montgomery, 94 Me. 192, 47 Atl. 164.

THE PROFESSED GROUND FOR DISCRIMINATION.

The history of thinking is a record of laboriously tearing down classifications which grew and were accepted thoughtlessly. Classes synthesized from hypotheses, yield to facts gathered in the field. Armchair assumptions grouping persons or things give way before data. The scholar and the judge no longer have the easy expedient of relying on classifications born in the study, but must face established facts.

This is particularly true in constitutional cases. Where it is claimed that a right guaranteed by the Constitution has been impaired, it is the duty of the court itself to determine the facts, even in cases involving the propriety of a classification.

"*Weaver v. Palmer*, 270 U. S. 702, 70 L. Ed. 654;
Denver Union Stock Yards Co. v. U. S., 57 Fed.
735.

What, precisely, is the danger which the statute seeks to avoid?

In *Mott v. Cline*, 200 Cal. 434, 253 Pac. 718, the California Supreme Court said that the "ownership of the soil by persons morally bound by the obligations of citizenship is vital to the political existence of a state."

The United States District Court in *Terrace v. Thompson*, 274 Fed. 841, said: "It is within the realm of possibility that every foot of land within the state might pass to aliens."

The Supreme Court of the United States, quoting and affirming the District Court, said:

"It is obvious that one who is not a citizen and cannot become one lacks an interest in, and the power

to effectually work for the welfare of, the state. And so lacking, the state may rightfully deny him the right to own and lease real estate within its boundaries."

Terrace v. Thompson, 263 U. S. 220, 68 L. Ed. 275, 277.

The decision in *Porterfield v. Webb*, 263 U. S. 225, 68 L. Ed. 278, rests on the same reasoning.

Other decisions rephrase those statements. *All of the statements mistakenly assume that persons who are not citizens lack loyalty to and an interest in the State. All of them are founded on an error in reasoning, as will be shown.*

Mott v. Cline, supra, speaks of "owners" of the soil. The statute in question is broader. Reasoning which might, hypothetically, support a statute dealing solely with ownership would not necessarily support a statute forbidding even cultivation of the soil. The moral obligations of citizens could scarcely afford grounds for forbidding aliens the privilege of tilling the soil; or for denying to aliens the benefit of the soil after it had been tilled, let us say, by citizens who are morally bound and who, we may assume, have discharged those obligations.

It should be added that the obligations of citizenship which are of sufficient dignity for legislative recognition are enforced by positive law and act with equal force on aliens.

Carlisle v. U. S., 16 Wall. 148, 21 L. Ed. 426.

A class created by legislative fiat has no necessary characteristic other than that on which the class is based—

national origin: But this court has said, "Loyalty is a matter of heart and mind, not of race, creed, or color." (*Ex parte Endo*, 323 U. S. 283, 302, 89 L. Ed. 242.) A class composed of eligible aliens who have refused to become citizens are distinguishable by an attitude of heart and mind. But not a class of ineligible aliens. To deny to an alien the right to become a citizen, and then on *that ground alone* to brand him disloyal or, on *that ground alone*, conclusively to assume that he has an interest adverse to the State is as abhorrent to justice as it is repugnant to reason. Obviously among ineligible aliens are those who have the requisite heart and mind, as well as those who do not.

Thus ineligible aliens do not by that fact alone have any characteristic which requires prohibitory legislation. No matter who they are or where they came from, they are, today, the ancestors of American citizens. They include persons of every stripe, good and bad, Nathan Hales and Benedict Arnolds. The factual basis for a classification is wanting.

Is there a "statistical" basis? Is it true that so large a proportion of ineligible aliens harbor evil thoughts against the State that for facility of administration the legislature may treat them as a class? This is obviously not true. But even if it were true, the State could not deny a civil right to an individual simply because it was more expedient not to recognize exceptions.

Schlesinger v. Wisconsin, 270 U. S. 230, 70 L. Ed. 557:

Weaver v. Palmer, 270 U. S. 402, 70 L. Ed. 654.

In the *Schlesinger* case, *supra*, it was said:

"The presumption and consequent taxation are defended upon the theory that, exercising judgment and discretion, the legislature found them necessary in order to prevent evasion of inheritance taxes. That is to say, 'A' may be required to submit to an enactment forbidden by the Constitution if this seems necessary in order to enable the state readily to collect lawful charges against 'B.' Rights guaranteed by the Federal Constitution are not to be so lightly treated; they are superior to this supposed necessity." (70 L. Ed. 564.)

What, then, is the State seeking to protect? The California Supreme Court answered it by quoting from an earlier case:

"The ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of a state."

This statement embodies in its purest form the logical fallacy on which the decisions of the Supreme Court of the United States have been based. For, note, *nothing in the legislation denies to a citizen the right to own land*. Even if it be assumed that the government of a State, its polity would be better if its citizens were landowners, still the legislation could not be sustained, because it does not forbid the ownership of land by citizens. Even if it should be conceded, contrary to what everyone knows to be the facts, that one who is not a citizen and cannot become one lacks an interest in the State, still the legislation is void. That reason is ground for permitting *citizens* to own land; it is no ground for denying to *aliens* the right to own land.

Furthermore, aliens are permitted by the statute to own, cultivate, and use land. It is true they must be eligible to citizenship, but they need not have the slightest desire or the remotest intention to become citizens. They may be as disloyal and as wicked as anyone cares to imagine; yet their rights are greater than those of ineligible aliens. What proper purpose could possibly be served by excluding ineligible aliens from privileges accorded to disinterested, even antagonistic aliens? Even if it should be conceded that a prohibition directed at aliens could be sustained, the fact is that such a prohibition was not adopted by California, and it is not here in question. (*California Civil Code*, Sec. 671.)

Does the State believe that aliens owning land will somehow influence for evil the electorate's political decisions? Such a contention assumes the correctness of a classification based on "heart and mind" and is subject to the defects already noted. But in any event, the errors of such an argument are numerous. In the United States it is the citizen who directs the State, and the hypothetical disposition toward evil on the part of aliens cannot find an outlet in the State's polity. No alien is given a voice in directing the government.

And the fact is that it is California's own determination which denies to aliens the right to vote. Nothing in the United States Constitution interferes with the State's power to determine whether or not aliens may vote.

Constitution of the United States, Art. I, Sec. 2;
U. S. v. Wong Kim Ark, 169 U. S. 649, 42 L. Ed. 890;

People v. Scott, 56 Mich. 154, 22 N. W. 274;

Langer v. Balfour, 104 Ark. 466, 149 S. W. 75;

Cf. Van Vakenburg v. Brown, 43 Cal. 43.

Until recently many states allowed all male "residents" or "declarants" to vote, and obviously included aliens. (See cases collected at 20 C. J. 68 and 29 C. J. S. 38.)

What then would such an argument come to? A State denies to aliens the right to vote, and then argues that since they have not the right to vote, they may not own land. Obviously, one discretionary deprivation ought not to be accepted as justification for another.

The evil "within the realm of possibility" that aliens might buy up every foot of the State's land is too absurd to merit the effort required to deny it. The mere fact that an evil is mathematically or physically possible does not afford ground for classification. Constitutional rights cannot be wrested by hypotheses.

Finally, the irrefutable answer to all of the professed grounds of discrimination, the reality which strikes down the imaginary evils, is the history of the States who do not have such legislation. Even after the hysteria bred of war, only ten States deny the right to own land to ineligible and non-declarant aliens. Thirty-eight States have no such classification.* Hawaii, which has more Japanese and other Orientals than any State in the Union, has no such legislation. The States which do not discriminate against aliens in this respect include such prosperous States as New York, Massachusetts, Ohio and Colorado. No observable defection from loyalty marks those States. No lack of interest in the state's welfare is apparent. These States form a well-integrated, respected, and literate part

*In an Appendix we have set forth the current legislation in the several states and Hawaii as to the rights of aliens to own real property and limitations thereon.

of the United States; their people are no less healthy, cultured, and law-abiding than the other of the States. Comparison with California shows no injury by reason of alien land-ownership. Great foreign immigrations have made their homes in many of these States, but there is no evidence that any State or any large area in any State has been brought up by aliens; or if so, that this has injured the State.

In the light of the history of those States, the stated reasons for classification are exposed as the sheerest legal fictions, invented without honest regard for the facts, but solely for the purpose of lending a plausible exterior to prejudice, racism, and unconstitutional legislation.

Alien Escheats Arose Out of a Feudal Society and Are Unfounded Anachronisms Today.*

It is well known that our theories about ownership of land are of feudal origin. Ownership at the common law was, strictly speaking, predicated only of the king. Everybody else merely "held" the land mediately or immediately of the crown. This was different in other parts of Europe where there was such a thing as a real "alod," i. e., land not held by any human sovereign.

In England consequently no one could "own" land, i. e., hold it "in fee simple," or "have the freehold," except as a subject of the king. Tenure involved the "bond of allegiance," the *Ligeantia*. A foreigner was not a subject. He had no bond of allegiance. If he was a resident of England, he was only a tolerated sojourner, subject to arbitrary expulsion, and unless he was protected by

*This section of the brief is the work of Dr. Max Radin.

his own sovereign, he could be summarily imprisoned or executed. He had no standing in any court except by petition to the king directly, and that would not avail him against the king.

The collection of allegiance with land-tenure was not quite so definitely established in the early days of the common law, but well before the peak of the Middle Ages it had been settled that an alien could not own land within the king's dominions.

The English law with its feudal implications, almost precisely as it was worked out in Calvin's case concerning the *Antenati* and the *Postnati* just about the beginning of the colonization of North America, became the law of the colonies more or less as a matter of course. It may be remembered that the date of the first colonization, 1607, i. e., the fourth year of James I, is usually taken as the date at which the English common law was received in the United States.

Blackstone, whose commentaries were so widely read in the colonies and in the early history of our courts, makes the categorical statement that "an alien born may purchase lands or other estates but not for his own use, for the king is thereupon entitled to them." (Comm. I 371.) He gives the stereotyped reason for it, that the alien owing allegiance to another king who might later be at war with England, will be involved in "inconveniences."

It is hardly necessary to point out that the entire background is not merely feudal in its terminology but has its roots in the special feudal obligation which arose out of lands held by "Knight's service," much the most common and far the most important of the feudal tenures. This

obligation was that of serving personally and providing other military aid to the lord—usually the king—in war. Since this obligation rose out of the tenure itself, there was an obvious rationalization for the disability of an alien to hold land and the "inconvenience" mentioned by Blackstone was a real one.

But, in any case, except as a matter of feudal organization, the disability had no meaning. It never applied to personality which in a credit-economy soon came to be nearly as important as landed property even in England, and in the United States and most other states, out-ranks landed property.

The rule as to alien's right to hold real property as announced by Blackstone, prevented acquisition of property by process of law, *i.e.*, by succession. The title never devolved on the alien at all. If he bought the land, however, he could pass a good title and would not himself be disturbed in possession except by direct interposition of the king, by an inquisition called "office found." The term "escheat" was not properly applied to it.

All these feudal doctrines and the complications of the *antenati* and the *postnati* remained to plague the courts of the United States in the early decades of the nineteenth century. Kent, in his commentaries (2 Kent's Comm., 14th Ed., 80-90) expounds the intricate law which most of the states were beginning to shed.

Many, but not all of the states, have abolished most of the disabilities of aliens in respect of real property. An old list is contained in 1 Stimson, American Statute Law, §§6010-6015; this brief contains a complete digest. But it is unfortunately the fact that, throughout, the reform has been accomplished only in part and piece-meal.

It is quite true that in many cases aliens have acquired the rights of holding land by virtue of treaties entered into by the United States and their country of origin. In some instances these are special treaties, but sometimes the alien made his claim to be granted full rights of acquisition and user under a "most-favored-nation-clause." Because of these treaties, the disabilities of aliens have not brought into striking relief the absurdity of retaining in our present system, a disqualification predicated upon an organization of society not only wholly obsolete but fundamentally at variance with our economic and political practices and theories.

Nearly all other civilized countries have discarded the feudal background of land ownership. When any disability of aliens has been reintroduced, it is on a different basis. For example, the Republic of Mexico found after the secession of Texas that unlimited rights of aliens to acquire land might lead to the loss of actual territory. Again, in later times, the same country discovered that alien landowners who had powerful governments to back their claims might be in a better position than landowners. For that reason Section 27 of the Mexican Constitution provides, first, that ownership of land is primarily reserved for Mexican citizens, and, second, that aliens may, by general or special permission, acquire lands only on the express condition that if they at any time seek the intervention of their own governments to assert their rights, they forfeit the land to the state.

Even here, it will be observed, all aliens are treated in the same way. And the occasion for excluding aliens to the extent that they are excluded, is not a baseless theory of racism, but a specific protection against a

danger actually experienced before it was deemed necessary to forestall its recurrence.

There would be no objection to the exclusion of aliens from the ownership of land if such a danger existed, especially if cogent evidence of the dangers were available. No one will assert that there is such a danger in California. And it is to be noted that in Mexico, they did not follow the attempt in California and other Western States and discriminate between Americans and other foreigners or between "Anglo-Saxons" and other foreigners, although the real and demonstrable danger in Mexico had come from one source only, to wit, the United States.

The absurdity of maintaining those vestigial and functionless appendices is made even more prominent by the fact that England, from which we have derived them and which kept them long after the rest of Europe had abandoned them, did finally abolish them and did so at one blow, by the Naturalization Act of 1870. Only one exception was made. An alien might not own a British ship, an exception in no sense unreasonable in itself and generally found among the maritime nations of the world.

It is only a corollary of the right to distinguish between an alien's right to enjoy real property and his right to enjoy personal property, that the Alien Land Law, which adds to that discrimination, can be defended at all. It rests on some such statements as that found in Mr. Justice Henshaw's opinion in *Blythe v. Hinckley*, 127 Cal. 431:

"It is an established rule of law, everywhere recognized, arising from the necessities of the case, that the disposition of immovable property, whether

by deed, descent, or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated."

These words are quoted from *U. S. v. Fox*, 94 U. S. 315. Other cases are quoted to the same effect. *Hutchinson Inv. Co. v. Caldwell*, 152 U. S. 65; *Mager v. Griams*, 41 How. 490. But these cases all dealt with the inheritance of property which is a matter of a special sort and in the last case, *Mager v. Griams, supra*, Justice Taney expressly declared that in respect of inheritance there is no distinction to be made between real and personal property.

More important than this last fact is the circumstance, that the Fourteenth Amendment was in no sense at issue in the first two cases and was not in existence in the last. It is in regard to that Amendment that the issue arises here.

California, in its first Constitution, 1849, Article I, 17, gave "resident foreigners" the same rights, in respect to the possession, enjoyment and inheritance of property, as native-born citizens. Cf., the edition of 1907, edited by C. F. Curry and published by state authority, p. 93. It is important to note this, because in many editions of the Constitution the original form is not cited, although the text of the 1849 Constitution is frequently referred to. Cf., the many editions by W. F. Henning which are commonly to be found in libraries and which erroneously give the form of 1879 as the original text. (1st Ed. 1895, p. 44.)

The authentic text appears in the supplement to both the English and the Spanish text of the Debates of the Convention, published in 1850, at Washington, (Eng. text, App. p. IV; Span. text, App. p. IV.)

The discussion on this point was brief. One member of the Constitutional Convention, Mr. Larkin (p. 43) moved to substitute "citizen" for "resident." The motion was defeated. A motion to strike out the entire section was defeated by a vote of 25 to 11; substantially more than 2 to 1.

This was not because the Californians of 1849 had no race prejudices. They definitely did, as the discussions set forth in the Debates, pp. 68-70, show. Many did not intend to allow "full-blooded Indians" or "Africans" to vote. But it never occurred even to those who meant to prevent their voting to deprive them of their property or their right to own property. (*ibid.*, p. 69.) They did not quite descend to that level.

It was not until the Constitution of 1879 that the term "foreigners" was qualified by the addition of the words "of the white race, or of African descent, eligible to become citizens of the United States under the naturalization laws thereof." It is this form which is found in our present Constitution, I, 17.

It is obvious that this section of the Constitution, even assuming its constitutionality under the Fourteenth Amendment, which is specifically challenger in this case—could not justify the Alien Land Law. If the words mean anything they would also limit the right to have *personal* property, to native-born citizens, white foreigners and persons of African descent. And on its face it would be contrary to the Constitution of the United States, since the right to possess personal property, as can be seen at once, is absolutely essential for living at all under modern conditions.

Evidently this is also the opinion of the Supreme Court of the United States. In the case of *Terrace v. Thompson*, which is the foundation of all the cases in California which have passed in the power to restrict the ownership of land to certain classes of aliens, the Court declared (263 U. S. 197, 216-217):

"The Fourteenth Amendment, as against the arbitrary and capricious or unjustly discriminatory action of the State, protects the owners in their right to lease and dispose of the land for lawful purposes and the alien resident in his right to earn a living by following ordinary occupations of the community."

The Court, to be sure, goes on to say (*ibid.*, p. 221):

"It is not an opportunity to earn a living in common occupations of the community, but it is the privilege of owning or controlling agricultural land within the State. The quality and allegiance of those who own, occupy and use the farm lands within its borders are matters of highest import and affect the safety and power of the State itself."

This case and the case of *Webb v. O'Brien*, 263 U. S. 313; were decided in the same term, by the same Court, Mr. Justice Butler writing the opinion in both cases. No one of the members of the Court then is now a member of that high tribunal.

It will be seen that even those cases which go as far in these matters as any court has ever gone, will not on analysis support the contention that an exclusion of certain aliens, based on race, is admissible.

The case is based on the common law disability of all aliens. (*Ibid.* p. 217.) As so based, says the Court, the State law is valid:

"State legislation applying alike and equally to all aliens, withholding from them the right to own land, cannot be said to be capricious or to amount to an arbitrary deprivation of liberty or property, or to transgress the due process clause."

The second basis is that of allegiance. *Bona fide* declarants are permitted to own land. This the Court says in the passage already cited obviates the difficulty that ownership of land might be combined with foreign allegiance. The Court here harks back to the *ligemantum fidei* of feudal times. It may be said at once that there is no basis in fact, and none has been offered, for the doctrine that under modern conditions, which we trust are very different from feudalism, foreign allegiance is any more harmful if the foreigner owns land, than if he owns a controlling share in some great industrial or utility company. We may, therefore, assert with all due respect, that the Court, in 1923, did not sufficiently consider the purely traditional and unrealistic character of the doctrine they invoked.

But even if, for the purposes of argument we did accept this doctrine, it would still not support the California Alien Land Law. (California General Laws, pp. 129, *et seq.*, Alien Property Initiative Act of 1920.) The Supreme Court declared that a discrimination was constitutional between aliens and citizens, and between declarant aliens and other aliens. The discrimination was based on the fact of allegiance. But the California Act discriminates between aliens "eligible to citizenship" and other aliens. It therefore violates the one basis on which

even so extreme a case as *Terrace v. Thompson* is put. It leaves in control and possession of land a great many aliens who have never declared their intention to be in the allegiance of the United States, including many who hold allegiance to countries recently at war against the United States, and a great many who have so long been residents without becoming declarants, that we may infer a settled purpose never to become citizens of the United States.

It was the custom of the California cases which have passed on the constitutionality of the Alien Land Law to rely on *Terrace v. Thompson*, or *Webb v. O'Brien*, and not to analyze the situation further. Cf. *Mott v. Cline*, 200 Cal. 434, 444, *et seq.*, *Porterfield v. Webb*, 195 Cal. 71, 83, *et seq.* Since the cases in the Supreme Court are based on a wholly different ground from that found in the California law, it is respectfully submitted that the California cases were without foundation so far as the Federal Constitution is concerned.

We may venture to assert that the cases in California and elsewhere permitting discrimination against "aliens ineligible to citizenship" were decided at a time and in a general background wholly different from that of the present day. It was admitted at the time that however covered by the reference to citizenship and allegiance, the real basis was race. That is admitted in *Porterfield v. Webb*, 195 Cal. 71, 82, where the Court says:

"Racial distinctions may furnish legitimate grounds for classifications, under some conditions of social or governmental necessities."

The Court quotes the case of *Piper v. Pine Hill Dist.*, 193 Cal. 664, where some similar, very general statement

is made, although in that case the Court *refused* to make a racial distinction. But at all events, if the feeling and temper and conventional attitude of people were legitimately considered in 1923 or before, it must be evident that the change in American attitude generally on that subject must be considered.

We have had such drastic and dreadful evidence of what the results of racial discrimination are, we have so firmly bound ourselves by the Charter of the United Nations, to permit no discrimination by race, that these insufficiently considered phrases in the older cases should be by this Court formally and decisively rejected.

No one will seriously pretend that whatever may be the terms by which it is covered, the discrimination against Japanese here challenged is based on anything but race. The vast majority of the Japanese immigrants ineligible to citizenship have shown through grievous and unmerited sufferings their desire to remain here and their attachment to the United States. The few who have evinced a different feeling have been deported or are in process of deportation. It is certainly as legitimate for the Court to take into account the present far more scientific attitude to the problem of "race," as it is to consider the popular and prejudiced attitude of the past generation.

Just as Article I, Section 17, the Constitution of the State, does not justify the restriction of the right of owning real property to aliens eligible to citizenship, *i.e.*, white and persons of African descent, so Article XIX can certainly not be used for that purpose. This article, in several sections has been declared to be in violation of the Constitution of the United States. (*Cf. State v. S. S. Constitution*, 42 Cal. 578; *In re Parott*, 6 Sawy. 349, 1

Fed. 481.) The entire Article was of course originally enacted against the Chinese who by recent Federal statutes have been removed from the class of persons ineligible to citizenship. But the animating purpose is the same as that which governs the Alien Land Law and should be equally disavowed.

Conclusion.

The legislative preference for means to avoid an evil is not unlimited where fundamental rights are at stake. Legislation aimed at specific abuses (assuming any could be shown) could accomplish everything the state has a right to do without discriminating against persons. A legislative preference to accomplish a justified purpose by discriminating against persons could not sustain the legislation, because of the nature of the right involved.

Only a willing suspension of critical faculties could accept the professed grounds for the classification. The asserted lack of interest, the threat of alien monopoly of land, the danger that the soil will be abused are no more than the inventions of legal minds hard pressed to conceal the realities, the "*race undesirability*," and the evidences of sheer prejudice which surround the legislation, and which even now expose the utterances of some of its most passionate defenders.

The philosophy of the Fourteenth Amendment, not to say the history of the last decade, preaches a more cogent sermon than those racist generalizations. Our courts have said that legislation which discriminates against persons because of race is immediately suspect, and is not supported by the ordinary presumptions of validity, but must justify itself beyond dispute.

It has been shown that if the doctrine has roots in anything other than racial antagonisms, the historical basis has long since been abandoned. What suits a feudal society can hardly be justified in the middle of the twentieth century.

The times have brought question such as those underlying this case into focus. Many decisions of the 'twenties, political, economic, racial, and judicial, have since been re-examined, rejected, and left far behind. The course of America's and the world's history since the twenties has been marked by sharp reconsideration of tenets which twenty-five years ago we thought immutable.

The decision in this case, whatever it is, will be a landmark. The courts of this generation must either pierce the veil of assumptions and false legalisms with which anti-race laws have been surrounded, or by acquiescence they will perpetuate that folklore. Our future will forever receive the impress of that decision.

We respectfully submit this Court should grant certiorari and on decision reject the formal, the unreal, and, in some few cases, the consciously dishonest excuses for violating the fundamental notion of equality under the law which is Americanism, and embodied in the Fourteenth Amendment. The Alien Land Laws must be held unconstitutional and the judgment appealed from reversed.

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APPENDIX.

Alien Land Laws of the Several States and Hawaii.

ALABAMA:

Constitution, Sec. 34;

Code of 1940, Title 47, Chapter 1.

An alien may take, hold, dispose of and transmit real and personal property to the same extent as a native citizen.

ARIZONA:

Arizona Code, Annotated (1939), Chapter 71, Section 201.

Similar to California.

ARKANSAS:

Arkansas Statutes, 1943, Act 47.

"An act to safeguard the real property of the State of Arkansas and the Citizens thereof and for other purposes because on account [sic] of the standards of living of the Japanese people, a white person cannot profitably compete with the Japanese either in agriculture or business; now therefore be it enacted:

No Japanese shall ever hold title to any lands . . ."

COLORADO:

Colorado Statutes, Annotated (1935), Chapter 7.
Section 6.

All aliens may inherit, purchase, hold, enjoy, alienate and transmit property real and personal the same as citizens.

CONNECTICUT:

General Statutes, Revision of 1930.

Sec. 5055. Resident aliens and citizens of France, if treaty so provides, have same rights as to real property as citizens.

Sec. 5056 provides for some limitations on non-resident aliens.

DELAWARE:

Revised Code of 1935.

Sec. 3655 provides that real and personal property situated in this state may be held by aliens in the same manner as by citizens.

FLORIDA:

No express statute, but Section 731.28, Florida Statutes, declares that there is no difference between aliens and citizens as far as inheriting land is concerned.

GEORGIA:

Code of Georgia, Annotated, Title 79, Section 303.

Provides that all aliens, except alien enemies, may own land.

HAWAII:

Revised Laws of Hawaii (1945), Section 4556.

All aliens may purchase land through private persons but may not acquire public land under homestead laws, unless they have declared intention to become citizens.

IDAHO:

Idaho Code, Annotated (1932), Title 23, Section 101.

Provides that aliens not eligible to citizenship may only acquire land to extent of treaties between their country and the United States, but Title 14, Section 115, permits resident aliens to inherit land.

ILLINOIS:

Smith-Hurd Illinois Annot. Statutes, Chapter 6, Sections 1, 2, 3.

Aliens may hold land for 6 years. Thereafter, if alien not naturalized, it escheats.

INDIANA:

Burns' Indiana Statutes, Title 56, Sections 501, 504, 505.

Aliens, resident or non-resident, can hold land as much as 320 acres for five years.

IOWA:

Code of 1939, Section 10214.

Resident aliens can own land without restriction. Certain restrictions on non-resident aliens.

KANSAS:

General Statutes of Kansas (1935), 1943 Supplement, Chapter 59, Sections 511, 512; Chapter 67, Section 701.

Similar to California.

KENTUCKY:

Kentucky Revised Statutes (1944), Section
381.280

Declarant aliens may own land.

LOUISIANA:

No restrictions against aliens owning land. No express statutes.

MAINE:

Revised Statutes of 1944, Chapter 154, Section 2.

Aliens may take, hold, convey and devise real estate in the same manner as citizens.

MARYLAND:

Flack's Annotated Code of Maryland (1939),
Article 3, Section 1.

Aliens, other than enemy aliens, may own land.

MASSACHUSETTS:

Annotated Laws of Massachusetts, Chapter 184,
Section 1.

Aliens may own land.

MICHIGAN:

Constitution (1908), Article 16, Section 9.

Resident aliens have same rights at citizens, except as to franchise.

MINNESOTA:

Session Laws (1945), Chapter 280.

Aliens can own land up to 90,000 square feet except by devise, inheritance, or as security for indebtedness in which case there is no limitation as to amount. No limitation if alien has declared his intention to become a citizen.

MISSISSIPPI:

Mississippi Code of 1942, Section 842.

Resident aliens may own land; non-residents subject to some limitations.

MISSOURI:

Revised Statutes of Missouri (1939), Sections 15228 to 15230.

Aliens who have not declared their intention to become citizens may only acquire land by devise or descent or in collection of debts unless such right is secured by existing treaty.

MONTANA:

Revised Codes of Montana (1935), Sections 6802.1-6802.4.

Aliens not eligible to citizenship cannot take title to land except mines and mining property. Such alien may, however, acquire land in good faith under mortgage foreclosure or in ordinary course of justice in collection of debts, and hold it for not over 12 years.

NEBRASKA:

Revised Statutes of Nebraska (1943), Chapter 76;
Sections 411; 403; 405.

Aliens may not hold title to real estate outside of corporate limits of cities and towns except in satisfaction of a lien in which case it must be sold within ten years after title is obtained. Resident aliens may hold any property acquired by devise or descent for five years.

NEVADA:

Nevada Compiled Laws of 1929, Section 6365.

No difference between resident aliens and citizens. Non-resident aliens except Chinese can acquire real property by purchase. Non-resident aliens cannot inherit property or take under a will unless country where alien resides or of which he is a citizen accords such rights to citizens of United States.

NEW HAMPSHIRE:

Revised Laws of New Hampshire (1942), Chapter 259, Section 19.

No distinctions between resident aliens and citizens.

NEW JERSEY:

Revised Statutes of New Jersey, Cumulative Supplement, Title 46, Chapter 3, Section 18 (1943 Act).

Resident aliens permitted or licensed by government to remain in and engage in business in United States who have not been arrested or interned may acquire, hold, and convey land as if native-born citizens.

NEW MEXICO:

Constitution, Article 2, Section 22.

Similar to California.

NEW YORK:

McKinney's Consolidated Laws of New York, Annotated, Title 49, Article 2, Section 10.

No distinction between aliens and citizens.

NORTH CAROLINA:

General Statutes of North Carolina (1943), Chapter 64, Section 1.

No distinction.

NORTH DAKOTA:

Revised Code of 1943, Chapter 47, Section 0111.

No distinctions.

OHIO:

Page's Ohio General Code, Sections 10503-10513.

No distinction.

OKLAHOMA:

Oklahoma Statutes Annotated, Title 60, Section 121;

Constitution, Article 22, Section 1.

Resident aliens can hold title; land must be disposed of five years after he ceases to be *bona fide* resident.

OREGON:

Oregon Compiled Laws, Annotated (1940), Title 61, Section 101;

Session Laws of 1945, Chapter 436.

Similar to California.

PENNSLYVANIA:

Purdon's Pennsylvania Statutes Annotated, Title 68, Section 25.

Aliens, other than enemy aliens, may hold real estate but not more than 5,000 acres nor to exceed a net income of \$20,000 a year.

RHODE ISLAND:

General Laws of 1938, Chapter 432, Section 1.

No distinction.

SOUTH CAROLINA:

Constitution of 1895, Section 35, Article 3.

Duty of Assembly to enact law limiting number of acres which any alien may own.

Code of 1942; Section 7790.

Aliens may hold property as citizens up to 500 acres of land.

SOUTH DAKOTA:

Constitution, Article VI, Section 14.

Constitution provides that no distinction shall ever be made by law between resident aliens and citizens in reference to possession, enjoyment, or descent of property.

TENNESSEE:

Williams Tennessee Code, Annotated, 1934, Section 7187.

No distinction.

TEXAS:

Vernon's Annotated Texas Statutes (Civil Statutes), Title 5, Sections 167-172.

Aliens may acquire and hold lands in any incorporated or plated city, town or village without restriction.

Title to or leasehold or other interest in any other land in state may not be acquired or held by aliens except those who:

1. Were *bona fide* residents of state on June 12, 1921.
2. Are eligible to citizenship, are inhabitants of the state and have declared their intention of becoming United States citizens.
3. Are natural born citizens of nation having common land boundary with United States.
4. Are citizens or subjects of nation which permitted United States citizens to own land.

Aliens may acquire and hold lands in collection of debts and by devise or descent but only for 5 years.

UTAH:

Utah Code Annotated, 1943, 1945 Cumulative Pocket Supplement, Title 78, Chapter 6a (enacted in 1943).

Similar to California.

VERMONT:

No statute on the subject. *State v. Boston etc. R. R. Co.*, 25 Vt. 433, held that aliens not enemies may acquire real or personal property the same as citizens.

VIRGINIA:

Virginia Code of 1942, section 66.

No distinction, except as to enemy aliens.

WASHINGTON:

Remington's Revised Statutes, Section 10581.

Aliens, other than those who have in good faith declared intention to become United States citizens, may not own land except if acquired under mortgage foreclosure and in that case for sixteen years. Aliens may also hold land for ten years for a purpose for which an alien is accorded the use of land by a treaty between United States and the country whereof he is a citizen.

WEST VIRGINIA:

Michie's West Virginia Code of 1943, Annotated,
Chapter 36, Article 1, Section 21.

No distinction.

WISCONSIN:

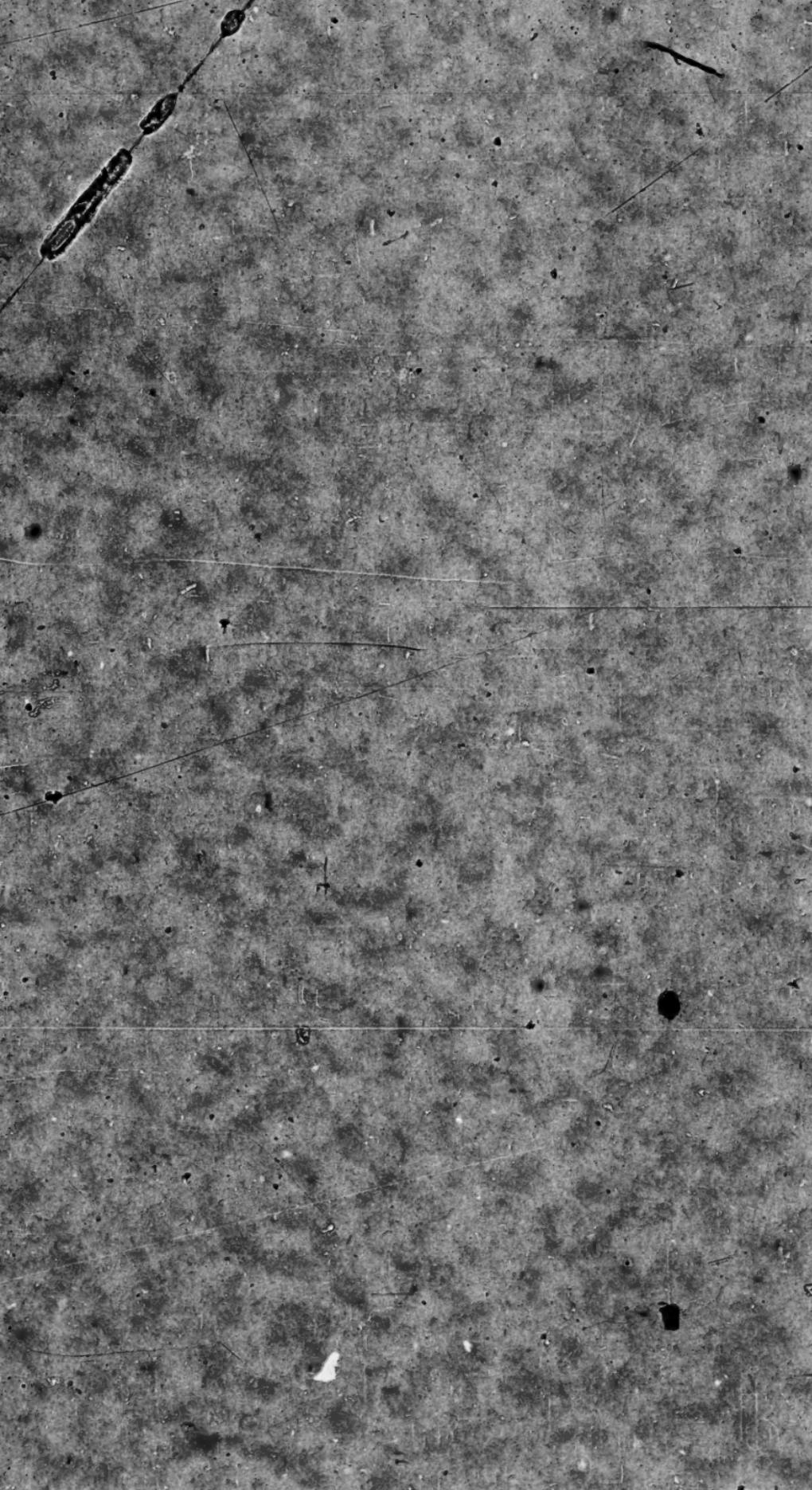
Wisconsin Statutes, 1943, Chapter 234, Section 22.

No distinction between citizens and resident aliens.
Some limitation on amount of land that may be owned
by non-residents.

WYOMING:

Session Laws of Wyoming, 1943, Chapter 35.

Aliens not eligible to citizenship (except Chinese) may not acquire, possess, enjoy, use, lease, transfer, transmit or inherit real property or any interest therein or have in whole or in part, the beneficial use thereof.



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MAR 28 1947

No. 1059

CHARLES ELIOTT DROPPLE

Supreme Court of the United States
OCTOBER TERM, 1946

FRED Y. OYAMA and KAJIRO OYAMA,

Petitioners,

v.

STATE OF CALIFORNIA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF CALIFORNIA.

BRIEF OF AMERICAN JEWISH CONGRESS, AS
AMICUS CURIAE, IN SUPPORT OF PETITION

AMERICAN JEWISH CONGRESS,
Amicus Curiae.

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March 1947.

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Supreme Court of the United States

No. 1059—October Term, 1946

FRED Y. OYAMA and KAJIRO OYAMA,

Petitioners.

v.

STATE OF CALIFORNIA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF CALIFORNIA

BRIEF OF AMERICAN JEWISH CONGRESS, AS *AMICUS CURIAE*, IN SUPPORT OF PETITION

The American Jewish Congress respectfully submits this brief, *amicus curiae*, in support of the Petition for Certiorari in this case.

The American Jewish Congress is an organization composed of thousands of Americans of Jewish faith and ancestry, organized in part "to help secure and maintain equality of opportunity for Jews everywhere, and to safeguard the civil, political, economic and religious rights of Jews everywhere". It established its Commission on Law and Social Action in 1945, in part

To fight every manifestation of racism and to promote the civil and political equality of all minorities in America.

From time to time issues come before this Court involving the basic relationships between the many racial, religious and national groups which make up our multicultural nation. Even where the immediate case does not directly involve members of the Jewish faith, the decision of this Court establishes rules and patterns which have application to all minority groups.

Such an issue is presented here. The petition for certiorari in this case challenges the constitutionality of the California Alien Land Law on the ground that, as worded and as applied, it discriminates among persons within the State of California on the basis of race.*

In support of our belief that the California Alien Land Law should no longer be given judicial approval, we submit to this Court our view of the basic evils which flow from this statute and the manner in which it perpetuates undemocratic legal, economic and social patterns.

Jurisdiction

The judgment of the California Supreme Court was entered October 31, 1946 (R. 121), and a petition for rehearing was denied on November 25, 1946 (R. 120). The petition for certiorari was filed on February 25, 1947, pursuant to § 237 of the Judicial Code.

The Statute Involved

The pertinent sections of the California Alien Land Law [1 Deering's General Laws, Act 261; Stats. 1921, p. lxxxiii, as amended by Stats. 1923, p. 1020, Stats. 1927, p. 880, Stats. 1943, chs. 1003, 1059 *] are set forth in Appendix to the petition for certiorari, pages 29-33.

* The statute was also amended by Stats. 1945, ch. 1136, after the commencement of this proceeding.

Statement of the Case

This is a proceeding brought by respondent in the California Superior Court, under § 7 of the Alien Land Law (Petition, p. 32), for the escheat of certain real property allegedly conveyed in violation of § 2 of that Law (Petition, p. 29) (R. 1-8).

Petitioner Fred Y. Oyama, a minor, is an American citizen (R. 59). Petitioner Kajiro Oyama, his father and guardian, is an alien of Japanese descent (R. 58-59).

The two conveyances here attacked took place, respectively, in 1934 (R. 59-61) and in 1937 (R. 61-63). In each case agricultural land was conveyed to petitioner Fred Y. Oyama (R. 60, 6, 61), the consideration having been paid by his father and mother (R. 60, 62).

Respondent's petition alleged that the conveyance to petitioner Fred Y. Oyama was a subterfuge and a fraud; and that his father and mother, ineligible aliens, were the true owners and users of the land, in violation of § 2 of the Act (R. 3-5, 6-7). Petitioners' answer alleged that the transactions were made in good faith as a gift to the son, and that the land has been occupied and used for his benefit (R. 54-55).

Petitioners filed a demurrer to the complaint, contending, *inter alia*, that the California Alien Land Law violated the Fourteenth Amendment (R. 18-19, 19-21, 22-33). The demurrer was overruled, the Superior Court holding itself bound by the decisions of this Court and of the California Supreme Court (R. 38, at 50-51). This contention was renewed at the trial and again rejected (R. 80).

After the trial (R. 72-104), the Superior Court found that the allegations of the petition were true, and that petitioner Kajiro Oyama, and not his son, petitioner Fred Y. Oyama, was the true owner of the land (R. 58-63). The Court found that the presumption of § 9(a) had not been rebutted (R. 103). The Court concluded that the land had escheated to the respondent (R. 63-64).

On appeal in the California Supreme Court, petitioners renewed their contention that the Alien Land Law violated the Fourteenth Amendment (R. 105, 109). The Court expressly passed upon this contention, and concluded that the statute was valid (R. 112-119).

Question Presented

The sole question discussed in this brief is whether the California Alien Land Law deprives the petitioners of the equal protection of the laws, in violation of the Fourteenth Amendment.

Summary of Argument

The California Alien Land Law in practice and by its terms discriminates against aliens and citizens of Japanese ancestry on racial grounds.

Aliens are entitled to the protection of the Fourteenth Amendment. A statute which discriminates on racial grounds is permitted by the Fourteenth Amendment only when required by "pressing public necessity". *Korematsu v. United States*, 323 U. S. 214, 216 (1944).

There is no "pressing public necessity" which requires the restrictive provisions of the California Alien Land Law. *Terrace v. Thompson*, 263 U. S. 197 (1923), and following cases, holding such laws to be valid, were incorrectly decided, and should be overruled. *Hirabayashi v. United States*, 320 U. S. 81 (1943), and the *Korematsu* case are distinguishable. The *Terrace* case is also inconsistent with earlier cases holding that a state may not deny to aliens the ordinary means of earning a livelihood, *Truax v. Raich*, 239 U. S. 33 (1915), and that a State may not regulate immigration. *Chy Lung v. Freeman*, 92 U. S. 275 (1875).

The California Land Law is also invalid because of its effect upon citizens of Japanese ancestry. It places discriminatory burdens on the enjoyment of ordinary family benefits by the citizen children of Japanese aliens. In addition, creation by a State of classes of aliens along racial lines has a divisive effect upon the corresponding citizen groups because of its establishment and encouragement of racial patterns in our legal, economic and social systems.

Certiorari should be granted in view of the importance of the questions raised.

ARGUMENT

POINT I

The California Alien Land Law discriminates against petitioners on racial grounds.

The purpose of the California Alien Land Law to discriminate against the Japanese has never been denied. This racist purpose is apparent from the standards adopted by the statute.

Section 2 of the California statute (Petition, p. 29) prohibits aliens other than those mentioned in § 1 from possessing, occupying, using, etc., land, except as provided by treaty. Since the aliens mentioned in § 1 are "all aliens eligible to citizenship under the laws of the United States", the class forbidden to hold land is composed of aliens ineligible to become citizens. The onerous guardianship provisions of § 4 and § 5, as well as the presumptions of § 9, are also keyed to this definition of ineligible aliens.

The laws of the United States establishing eligibility to citizenship discriminate against certain races, including the Japanese. Thus, the present form of 8 U. S. C. § 703 restricts eligibility to white persons, persons of African

nativity or descent, descendants of races indigenous to North and South America and India, Filipinos and Chinese. All other races are excluded from eligibility.

The racial discrimination inherent in our naturalization laws is recognized in the opinions of this Court. Thus, Mr. Justice Cardozo, in *Morrison v. California*, 291 U. S. 82 (1934), said at page 85:

"But a person of the Japanese race, if not born a citizen, is ineligible to become a citizen, i.e., to be naturalized * * * [The naturalization statute] excludes the Chinese * * * the Japanese * * * the Hindus * * * the American Indians * * * and the Filipinos".*

See also *Terrace v. Thompson*, 263 U. S. 197, 220 (1923); *Ozawa v. United States*, 260 U. S. 178 (1922).

The California Alien Land Law thus adopts a racial prohibition as effectively as if it stated specifically that aliens of Japanese descent are ineligible to own land.

It is true that the naturalization laws also exclude certain aliens from eligibility to citizenship on moral or political grounds, e.g., 8 U. S. C. §§ 704-707, and presumably the California Alien Land Law also incorporates these disqualifications. This does not alter the fact that the federal law contains a racial discrimination against the Japanese which is adopted by the California law.

In the instant case, petitioner Kajiro Oyama was found to lack the power to own land solely because he was ineligible to become a citizen; that ineligibility arose solely because he was Japanese. Similarly petitioner Fred Oyama was found not to be the true owner of the land solely because he had failed to rebut the presumption of § 9, a presumption which arose only because his father was an alien, ineligible because Japanese..

* Since 1934, all the classes mentioned by Mr. Justice Cardozo have been made eligible, save only the Japanese. Acts of Oct. 14, 1940, 54 Stat. 1140; Dec. 17, 1943, 57 Stat. 601; July 2, 1946, 60 Stat. 416.

The California Alien Land Law thus discriminates against petitioners solely because of race, whether consideration is given to the terms of the statute, or to its application in this case.

POINT II

The California Alien Land Law, in its discrimination against aliens of Japanese descent, violates the equal protection clause of the Fourteenth Amendment.

In this case the California courts have found that petitioner Kajiro Oyama was the true owner of the land in question, and that he was an ineligible alien. For purposes of the discussion in this point, we will assume the validity of this finding. We contend that California may not forbid an alien to own land merely because he is Japanese, and that the California Alien Land Law, which, as we have shown (*supra*, pp. 5-7), has this effect, is contrary to the mandate of the Fourteenth Amendment that no State "shall * * * deny to any person within its jurisdiction the equal protection of the laws".

A. Aliens are protected by the equal protection clause of the Fourteenth Amendment.

The "persons" protected by the equal protection clause of the Fourteenth Amendment include aliens as well as citizens. *Yick Wo v. Hopkins*, 118 U. S. 356, 369 (1886); *Truax v. Raich*, 239 U. S. 33, 39 (1915). Thus petitioner Kajiro Oyama, although an alien, is none the less entitled to invoke the protection of this clause.

B. Racial discrimination by a State, except where justified by "pressing public necessity," is contrary to the fundamental democratic principles upon which the Constitution is founded, and violates the Fourteenth Amendment.

This Court has often stated that racism is obnoxious to our fundamental democratic tenets, and that it cannot be countenanced under the Fourteenth Amendment, except under the most urgent conditions. In *Yick Wo v. Hopkins*, 118 U. S. 356 (1886), Mr. Justice Matthews said for a unanimous Court, at page 374.

"No reason for [a discrimination against Chinese] is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eyes of the law is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution".

The severe standard by which racial legislation must be judged was recently emphasized by this Court in two cases arising out of the recent war. *Hirabayashi v. United States*, 320 U. S. 81 (1943); *Korematsu v. United States*, 323 U. S. 214 (1944).

In the *Hirabayashi* case, the Chief Justice stated for the Court, at 320 U. S., page 100:

"Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection".

In the *Korematsu* case, Mr. Justice Black, in the opinion of the Court, again referred to the narrow scope for racial legislation. The Court stated at page 216:

"It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can."

The Supreme Court of California, in the instant case, failed to give sufficient weight to this test. That Court concluded that the California Alien Land Law was valid if the Legislature had a rational basis for adopting it, rather than only if there was a clear and present danger to the State requiring the racial discrimination (R. 116-117).

The lower standard adopted by the California Court is utterly inconsistent with the authoritative rulings of this Court, to which reference has just been made. It is not enough that there may be a "rational basis" for excluding Japanese from owning land in California; in the words of the *Korematsu* opinion, there must be a "Pressing public necessity", before the racial discrimination may be justified.

C. The California Alien Land Law is not supported by a "pressing public necessity", and is therefore invalid under the Fourteenth Amendment. The cases in this Court upholding this statute should be overruled.

We have shown that the California Alien Land Law discriminates against petitioner Kajiro Oyama because of his race, and that such a statute is valid only when supported by a pressing public necessity. The California statute does not satisfy that strict standard, and therefore must fall.

It is true that the California Alien Land Law, along with a comparable statute of the State of Washington, was upheld in several cases decided by this Court. *Terrace v. Thompson*, 263 U. S. 197 (1923) (Washington Law); *Porterfield v. Webb*, 263 U. S. 225 (1923); *Webb v. O'Brien*, 263 U. S. 313 (1923); *Frick v. Webb*, 263 U. S. 326 (1923);

Cockrill v. California, 268 U. S. 258 (1925); cf. *Morrison v. California*, 291 U. S. 82 (1934). We believe that these cases were erroneously decided, and should be overruled.

Terrace v. Thompson, 263 U. S. 197 (1923), was the first case in this series, and the foundation stone upon which the others rested. The other cases were decided either upon the authority of the *Terrace* opinion, or for similar reasons. It is therefore necessary to discuss here only the *Terrace* case.

The Washington statute in the *Terrace* case prohibited the ownership of land by aliens who had not in good faith declared their intention of becoming citizens. (The statute was thus broader than California's, which limits its prohibition to aliens ineligible to become citizens.) The contention was made that this statute violated equal protection, since it contained an unjust discrimination against aliens ineligible to become citizens, who therefore could not declare their intention to become citizens.

The statute was upheld in this Court upon essentially two grounds:

1. "Two classes of aliens inevitably result from the naturalization laws,—those who may and those who may not become citizens. The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership as defined in the act." 263 U. S., p. 220;

2. "It is obvious that one who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of, the state, and, so lacking, the state may rightfully deny him the right to own and lease real estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot of land within the state might pass to the ownership or possession of non-citizens." 263 U. S., pp. 220-221.

We think that each of these grounds was faulty, and that the opinion is therefore without support in reason.

1. We shall not now argue, though we believe it to be true, that the Congressional discrimination is not a permissible one. We think that the power of Congress under Article I, Section 8 of the Constitution "To establish an uniform Rule of Naturalization" is limited by the due process clause of the Fifth Amendment, and that a discrimination on racial grounds cannot be justified. We submit, however, that the Congressional power, if it exists, to discriminate against the Japanese by declaring them ineligible to become citizens, does not justify a state discrimination in a different context.

The decisions of this Court upholding discriminatory naturalization laws are based upon the supposition that Congress' power in this field is plenary and without limitation. As this Court said in the *Terrace* opinion, itself, see 263 U. S., page 220: "Congress is not trammelled, and it may grant or withhold the privilege of naturalization upon any grounds or without any reason, as it sees fit."

The power of the States to regulate the ownership and occupancy of land, on the other hand, is not an untrammelled one which may be exercised "upon any grounds or without any reason". See, for instance, *Buchanan v. Warley*, 245 U. S. 60 (1917), where this Court held unconstitutional a state statute limiting the right of Negroes to own land. See also *Harmon v. Tyler*, 273 U. S. 668 (1927); *City of Richmond v. Déans*, 281 U. S. 704 (1930), both to the same effect.

The exercise of an *untrammelled* power in a discriminatory way cannot "in and of itself" justify the exercise of a *limited* power in the same discriminatory fashion, particularly where the limitation—here the Fourteenth Amendment—is designed to proscribe that type of discrimination. Indeed, if this aspect of the *Terrace* opinion were sound, similar reasoning could be used to justify *any* discrimina-

tion by a state against aliens ineligible to become citizens. They could be effectively excluded from the state entirely.

In sum, the Congressional discrimination against the Japanese creates no "pressing public necessity" sufficient to justify such *State* legislation as the Alien Land Law.

2. The second ground of the *Terrace* opinion was also fallacious: that ineligible aliens lacked an interest in the State, as well as the power to work for its welfare.

The California statute could not have been based upon such an assumed "evil". Such a lack of interest, if any, would not be restricted to ineligible aliens, but could be said to exist as to *all* aliens. But this assumed lack of interest is not in accord with the facts. Japanese aliens perhaps may not vote, but they still have the right of free speech in civic affairs, the privilege of paying taxes, the privilege of serving in the Army and Navy, and other rights and privileges by which a citizen works effectually "for the welfare of the state". Their children are citizens of the United States; surely their nurture and support are reasons enough for wholehearted interest in the State.

Certainly it cannot be said that this speculative danger creates a "pressing public necessity", which alone permits a State to discriminate on racial grounds. Even if a racial group of aliens lacks the same incentive to work for the welfare of the State, as other groups, it does not necessarily follow that there is an urgent danger to the State in permitting that racial class to own agricultural lands. The lack of such a pressing public necessity is clearly shown by contrasting the *Terrace* case with *Hirabayashi v. United States*, 320 U. S. 81 (1943), and *Korematsu v. United States*, 323 U. S. 214 (1944).

In both the *Hirabayashi* and *Korematsu* cases, this Court upheld racial discriminations by the Federal Government. A curfew in the one case and an exclusion from a certain area in the other were applicable only to those of Japanese descent. But in each case the discrimination was found valid only after the most careful study of the facts which were found to show an urgent need for the regulations.

We were engaged in a war threatening our existence and were in danger of invasion, espionage and sabotage. It was found that the military authorities could reasonably believe that the military necessity required the discrimination in order to ward off these dangers. Even then three Justices of this Court thought in the *Korematsu* case that the discrimination had reached beyond the bounds permitted by the Constitution.

In the *Terrace* case and here there is no such urgency. There is no war or other public emergency facing the State. Indeed, there is utterly no support for a conclusion that ownership of agricultural lands by Japanese aliens will undermine the safety of the State of California.

The *Hirabayashi* and *Korematsu* cases represent, in our view, a return, after a departure in the *Terrace* case, to the strict rule laid down in earlier decisions of this Court regarding State restraints on aliens. Thus, it was held in *Truax v. Raich*, 239 U. S. 33 (1915), that a State may not

"deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure" (p. 41).

See also *Vick Wo v. Hopkins*, 118 U. S. 356 (1886).

The effect of the California Alien Land Law can be the virtual exclusion of ineligible aliens from a common occupation: the tilling of the soil. For, as held by the California Supreme Court in this case, the scope of the law

"is much broader than the acquisition and ownership of land; it includes the right to acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property * * * [or to] * * * have in whole or in

part the beneficial use thereof" (R. 111, italics supplied).*

A concomitant result of this virtual prohibition upon ineligible aliens, i.e., Japanese, from following their agricultural occupation is, in effect, their exclusion from the State. If they cannot farm in California, they must perforce go elsewhere. Cf. *Truax v. Raich*, 239 U. S. 33 (1915), at page 42. Similarly, ineligible aliens, i.e., Japanese, may be deterred from coming to California, in view of the impossibility of following their occupation there. Indeed these purposes of the California Alien Land Law were admitted by the Supreme Court of California in *Estate of Yano*, 188 Cal. 645; 658, 206 Pac. 995, 1001 (1922):

"The object sought to be attained by these statutory provisions, that is, *to discourage the coming of Japanese into this State*, may be a proper one . . ." (Italics added.)

This regulation is thus tantamount to a control of immigration, a power vested exclusively in the Federal Government. *Truax v. Raich*, 239 U. S. 33, 42 (1915); *Fong Yue Ting v. United States*, 149 U. S. 698; 713 (1893), and not in the States, *Chy Lung v. Freeman*, 92 U. S. 275 (1875).

We urge this Court that it should adhere strictly in this case to the rule that only "pressing public necessity" can justify racial discrimination. The California Alien

* In *Webb v. O'Brien*, 263 U. S. 313 (1923), this Court held that an earlier form of the California Land Law, which prohibited to ineligible aliens only the power to "acquire, possess, enjoy and transfer real property" (see 263 U. S., p. 319, fn. 1), prevented Japanese aliens from holding land under a share cropping agreement. *Truax v. Raich* was distinguished, at page 324, on the ground that the California statute did not "deny the ordinary means of livelihood". The subsequent extension of the California statute, however, to prevent ineligible aliens from using, cultivating or having the beneficial use of agricultural land makes much more comprehensive the bar to a Japanese farmer from following his occupation. It is difficult to imagine any agricultural laborer who does not "cultivate . . . real property".

Land Law, which is racial legislation of the clearest kind, can claim no such justification: The decisions of this Court upholding such laws are entirely inconsistent with the basic philosophy which has otherwise governed its interpretation of the Fourteenth Amendment to the Constitution since the landmark decisions in the *Yick Wo* and *Truax* cases. They should be overruled.

POINT III

The California Alien Land Law discriminates against citizens of Japanese ancestry and thereby denies them the equal protection of the laws, in violation of the Fourteenth Amendment.

The petition for certiorari (pp. 8-17) demonstrates beyond cavil that §§ 4, 5 and 9 of the California Alien Land Law place the citizen children of aliens ineligible to citizenship in a class apart from citizen children of citizens or of eligible aliens. Under § 9 such a citizen child faces substantial obstacles in proving that he is the owner of land paid for by his parents, obstacles which other citizen children do not face. Indeed it may be said that the California Legislature might as well have provided simply that an ineligible alien could not give money to his citizen children for the purchase of land. Under §§ 4 and 5 onerous burdens are discriminatorily placed on the guardianship of the property of such children, *even where the guardian is a white citizen.*

The Court below held that these provisions deprived the citizen Fred Y. Oyama of no constitutional rights even though they put him off the land his father bought for him (R. 117). It rested this holding on the specious ground that "he acquired nothing by the conveyance and the Alien Land Law took nothing from him" (*id.*). The least that can be said of this argument is that it is highly unrealistic. It ignores the fact that a substantial and intended effect

of this law is to deprive citizen children of ineligible aliens of the ordinary benefits of the family relationship which other citizen children enjoy. It creates formidable obstacles, for example, to their being set up in farming, one of the "common occupations of the community" (*Truax v. Raich*, 239 U. S. 33, 41), by the accumulated savings of their parents. It creates discriminatory and burdensome regulations on guardianships.

These restrictions, however, are but specific illustrations of the evil effect of such legislation. The basic evil is the official sanction which it gives to racial theories and practices. The Fourteenth Amendment forbids State action which creates classes of citizens on the basis of race. Legislation of this type does just that, even though it appears to affect directly only aliens. The dichotomy created by the State between the members and non-members of a given race, even though limited to aliens, has inevitable repercussions among the corresponding groups of citizens. The split in the alien border of the fabric of the population cannot be kept from spreading to the body of the cloth.

It must be remembered that the implications of this case go far beyond the restrictions on land ownership immediately involved. Approval of those restrictions would mean approval also of existing legislation excluding Japanese aliens from fishing and other fields of endeavor and such other restrictive legislation as the State sees fit to adopt in the future. Such restrictions on the older members of the Japanese group establish economic patterns which are not readily disrupted by the younger citizen members of the group. They perpetuate distinctions which should be eradicated, enforce racial patterns, and prevent the elimination of barriers which cannot be allowed to endure in our multicultural society.

During the recent war, the Federal Government was forced to take steps which unfortunately had much the same effect: the imposition of curfew regulations and,

subsequently, the removal of all persons" of Japanese descent from West Coast areas. This Court approved these steps on the ground that they were

"Necessary to meet the threat of sabotage and espionage which would substantially affect the war effort and which might reasonably be expected to aid a threatened enemy invasion" (*Hirabayashi case*, 320 U. S., at p. 95).

It held that they were properly applied to an entire racial group, citizen and alien alike, because

"* * * social, economic and political conditions which have prevailed since the close of the last century, when the Japanese began to come to this country in substantial numbers, have intensified their solidarity and have in large measure prevented their assimilation as an integral part of the white population" (*id.* at p. 96).

It cited in this connection the California Land Law and other restrictive legislation and customs (*id.* at p. 97, note 4). It went on to note:

"The restrictions, both practical and legal, affecting the privileges and opportunities afforded to persons of Japanese extraction residing in the United States, have been sources of irritation and may well have tended to increase their isolation, and in many instances their attachment to Japan and its institutions" (*id.* at p. 98).

The very fact that such steps were necessitated during the emergency of war increases the importance of acting during the time of peace to eliminate the evils which prompted them. The only hope that they may never again become necessary lies in the encouragement of the process whereby all groups within the United States become a well integrated part of the population. The classic American approach is to open all occupations to all, not to drive one racial, religious or national group out of some

occupations, thereby increasing their concentration in others. This process will be inevitably retarded by legislation which reinforces distinctions between races by creating legal, social and economic patterns in which such distinctions are decisive.

POINT IV

Certiorari should be granted to review the decision of the Court below.

The decision of the Court below is in conflict with the decisions of this Court in the *Hirabayashi* and *Korematsu* cases since, as we have shown, it fails to apply the "pressing public necessity" test to this legislation.

In addition this case raises a question of general public importance. There can be no issue more important than the validity of the action of a state in creating and perpetuating racial discriminations which are "odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi* case, 320 U. S. at page 100.

On these grounds the petition for certiorari should be granted and, upon the argument, the judgment below should be reversed.

Respectfully submitted,

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FILE COPY

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1947

No. 44

FRED Y. OYAMA and KAJIRO OYAMA,
Appellants,

vs.

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANTS.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1947

No. 44

FRED Y. OYAMA and KAJIRO OYAMA,
Appellants,

vs.

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANTS.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Fred Y. Oyama, an American citizen, born in San Diego, California, in 1928, was named as one of the defendants in an action brought by the Attorney General of the State of California in the Superior Court of the State of California, in and for the County of San Diego, to procure a judgment ordering escheated to the State of California certain real property situated in San Diego County under the provisions of the so-called California Alien Land Law. (Tr., p. 1-8.) (See Appendix.)

Also named as a defendant in the proceeding was Kajiro Oyama, the father of petitioner, an alien by virtue of his birth in Japan and alleged to be ineligible to citizenship for that reason.

The further essential facts are thus stated in the opinion of the Supreme Court of the State of California:

"In the petition filed by the attorney general, he asserted that certain real property, by reason of its conveyance in violation of the Alien Land Law, has escheated to the state. Two causes of action were pleaded: In the first one, it was alleged that Kajiro Oyama, Kohide Oyama, formerly Kohide Kushino and Ririchi Kushino, are of the Japanese race, natives of the Empire of Japan and citizens and subjects of that country and, by reason thereof, are not eligible to citizenship under the laws of the United States; that Fred Y. Oyama is the son of Kajiro and Kohide Oyama, and is of the Japanese race but was born in California in 1928; and that June Kushino also is of the Japanese race and was born in

California in 1921. There has never been a treaty permitting a native of Japan to acquire an interest in the agricultural land of this country. Since 1935, by appointment of the Superior Court of the State of California, in and for the County of San Diego, Kajiro Oyama has been the duly qualified guardian of the person and estate of Fred Y. Oyama, a minor. June Kushino attained the age of 21 years in 1942 and during her minority, Ririchi Kushino was the guardian of her person and estate.

"In 1934, the petition continued, Kajiro Oyama and Kohide Oyama purchased certain agricultural land in San Diego County and a purported conveyance of it was made by one Yonezo Oyama to Fred Y. Oyama. The purchase price of \$4,000 was paid to Yonezo Oyama by Kajiro and Kohide Oyama. Upon the execution and delivery of this purported deed, Kajiro and Kohide Oyama entered into the possession of the property and have ever since occupied and cultivated it as their own, and have had in their own right the beneficial use and enjoyment of the lands for agricultural purposes. The purchase of the property and the taking of the deed in the name of Fred Y. Oyama was a mere subterfuge, a fraud upon the People of the State of California and a violation of the Alien Land Law of California. Moreover, these persons acted wilfully and knowingly and with intent to obtain the ownership and use of the agricultural lands for their own use.

"Other allegations of this count were that Kajiro Oyama failed to render any account to the superior court for his receipts and expendi-

tures as guardian, and has not filed any annual or other account or report with the Secretary of State of California, as required by section 5 of the Alien Land Law. No account or report has been filed by the guardian with the County Clerk of San Diego County or served upon the district attorney, but in conducting business affecting the land in controversy, Kajiro Oyama used the name 'Fred Oyama' and 'Y. Oyama', and maintained checking accounts in each of those names for the purpose of evading and violating the Alien Land Law.

"The second cause of action incorporated some of the allegations of the first count, including those having to do with the race, nativity, citizenship and status of the parties. It then pleaded that in 1937, the Superior Court of the State of California, in and for the County of San Diego in the matter of the guardianship of Juné Kushino, made an order confirming the sale of certain described land in that county from her to Fred Y. Oyama for a purchase price of \$1,500. Upon the making and recording of that order, Kajiro and Kohide Oyama entered into possession of the property and have since occupied and used it as their own and have had in their own right the beneficial use of the land for agricultural purposes. All of these acts were done by Kajiro and Kohide Oyama, wilfully, knowingly and with intent to violate the Alien Land Law of the State of California. The prayer of the petition was that the land conveyed to Fred Y. Oyama be decreed to have escheated to the state as of the date of the respective deeds; also that, as against the state, each of the defendants be forever

barred from asserting any claim or title to either parcel.

"The defendants demurred to the petition upon the grounds that it did not state facts sufficient to state a cause of action, that the court lacked jurisdiction, that the California Alien Land Law is unconstitutional, and that the causes of action are barred by the statutes of limitations. The demurrer was overruled.

"By answer, the defendants admitted the race and Japanese citizenship of Kajiro Oyama, Kohide Oyama, and Ririchi Kushino, but denied that, by reason thereof, they are not eligible to citizenship under the laws of the United States. They admitted the pleaded facts as to the birth and race of Fred Y. Oyama and June Kushino, and also the allegations concerning the guardianship proceedings. But the answer denied that Kajiro and Kohide Oyama purchased the property described in the complaint and asserted that Kajiro Oyama provided the money to purchase the two parcels of property as a gift to his son. Each of the transactions was made in good faith and for the purpose of acquiring for their son a means of earning a livelihood and for the further purpose of guarding and husbanding the gift for that purpose. The property described in the complaint is agricultural land, but Kajiro and Kohide Oyama have not occupied, used or cultivated the land as their own or had the beneficial use of it. As an affirmative defense, the defendants alleged that the state should not recover because of laches.

"Upon the trial of these issues, John C. Kurfurst was the only witness. He testified that he

had known the Oyama and Kushino families since about 1932. When the Japanese were evacuated from the Pacific Coast, he rented the land in controversy and, by two checks, paid the rent to Fred Oyama. These checks were returned to him endorsed in that name. Kurfurst had never heard the name Kajiro Oyama; he had always known the father of the family as 'Fred' and stated that 'everybody else called him Fred.' But he had received a letter signed 'Fred Oyama' notifying him that the property was being turned over to a Mr. Kelly, although Kurfurst had never heard the writer refer to himself by that name.

"Other testimony of Kurfurst was that at one time Oyama, senior, said 'Some day the boy will have a good piece of property because that is going to be valuable.' However, he admitted that in a letter which he wrote, in referring to 'Fred Yoshihiro Oyama,' he meant the son and not the father. He knew that the property belonged to the boy, Fred Oyama, and to June Kushino; also that the father was running the boy's business. But he did not know whether the checks were made out by the 'old man or the young fellow' and he did not know 'whether the boy signed it or Mr. Oyama.'

"Evidence of official records showed that no reports, pursuant to the requirements of the Alien Land Law, had been filed by the defendants. The state also provided that in the guardianship proceedings, on two occasions, the father of Fred Y. Oyama, as guardian, applied for leave of court to borrow money and to mortgage the property as security for the indebtedness. Both applications were granted.

"Upon evidence, the court found all of the facts alleged in the petition to be true. The conclusions of law drawn from these facts were that, as of 1934 and 1937, respectively, title to the two parcels of real property in question was vested in and did escheat to the State of California and the defendants were perpetually enjoined from setting up or making any claim to the land. The appeal is from that judgment." (The foregoing quotation is from the opinion of the California Supreme Court.)

The State Supreme Court affirmed the judgment of the Superior Court.

(See opinion of the Supreme Court of the State of California, Appendix A, 29 Advance California Reports, 157; 173 Pac. (2d) 794.)

A petition for a rehearing was denied by the State Supreme Court November 25, 1946. (Tr., p. 120.)

The Supreme Court of the State of California incorrectly states both the law and the facts in the following language:

"The property in question passed to the State of California by reason of deficiencies existing in the ineligible alien, and not in the citizen Oyama. The citizen is not denied any constitutional guarantees because an ineligible alien, for the purpose of evading the Alien Land Law, attempted to pass title to him. It is the deficiency of the alien father and not of the citizen son which is the controlling factor; therefore, any constitutional guarantees to which the citizen Oyama is entitled may not properly be considered, for the deficiency

in a person other than himself is the cause for the escheat. Property which the citizen never had he could not lose, and as the land escheated to the state instanter, he acquired nothing by the conveyance, and the Alien Land Law took nothing from him." (Tr., p. 117.)

The Supreme Court, in justifying its opinion, states as follows:

"The trial court's findings in regard to the violation of the statute are fully supported by the evidence. The inference to be drawn from the evidence that the real property was conveyed to the son, thereby putting it beyond the power of the father to deal with the property directly, the father's failure to file the reports required of a guardian, the unexplained failure of the father or any one of the defendants, to offer himself as a witness, and the presumption created by section 9 of the Alien Land Law, are ample in this regard.* Indeed this evidence convincingly points to the conclusion that the minor son had no interest in the property, his name being used only as a subterfuge for the purpose of evading the Alien Land Law."

*The provisions of section 9 of the Alien Land Law insofar as they are pertinent are as follows:

"A prima facie presumption that the conveyance is made with such intent (to prevent, evade, or avoid escheat) shall arise upon proof upon any of the following groups of facts:

a. The taking of the property in the name of a person other than the persons mentioned in section 2 hereof, if the consideration is paid or agreed or understood to be paid by an alien mentioned in section 2 hereof.

• • • In each of the foregoing instances the burden of proof shall be upon the defendant to show that the conveyance was not made with intent to prevent, evade, or avoid escheat • • •"

It is thus noteworthy that the entire case, insofar as it pertains to the minor citizen record holder of title who claims to be the beneficiary of his father's gift, rests upon the statutory presumption used in lieu of proof. All the other evidence pertains to the acts of his guardian, and the only evidence in support of the judgment depriving the citizen child of his real property is the statutory presumption which, under the law of California, constitutes evidence as contrasted with the law in some other jurisdiction that it is merely a rule of procedure.

This is further emphasized by the provisions of section 9 that the defendant must do more than to meet the presumption—he must overcome it.

The Supreme Court of California considered itself bound by decisions of the United States Supreme Court in

Terrace v. Thompson, 263 U. S. 197;

Cockrill v. California, 268 U. S. 258, 45 S. Ct. 490, 69 L. ed. 944;

Frick v. Webb, 263 U. S. 326, 44 S. Ct. 115, 68 L. ed. 323;

Webb v. O'Brien, 263 U. S. 313, 44 S. Ct. 112, 68 L. ed. 318;

Porterfield v. Webb, 263 U. S. 225, 44 S. Ct. 21, 68 L. ed. 278.

Only one of these cases involved the rights of an American citizen (*Cockrill v. California, supra*), and that case has been overruled, by implication, at least, by the decision of this court in *Morrison v. California*, 291 U. S. 82.

Porterfield v. Webb, 263 U. S. 225, merely upheld the constitutionality of the California Alien Land Law, insofar as it denied to aliens ineligible to citizenship the right to own land in the State of California.

Terrace v. Thompson, supra, held constitutional a statute of the State of Washington which forbade the ownership of land by aliens who had not declared their intention to become citizens.

Webb v. O'Brien, supra, again held that the California Alien Land Law, insofar as it limited the privileges of ineligible aliens to acquire real property, was not in conflict with the Fourteenth Amendment, and the opinion of Justice Butler points out that at common law aliens have no capacity to hold land against the state and, if taken, the land will be escheated to the state.

Frick v. Webb, supra, merely goes one step further and holds that forbidding aliens ineligible to citizenship to acquire stock in a corporation holding land for agricultural purposes does not deny the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution.

In not one of these cases is it held that an American citizen may not own land in his own right merely because the consideration for the purchase of the land was paid by his father, who was an ineligible alien.

Cockrill v. California, supra, might seem at first blush to pronounce a contrary ruling. The decision,

however, turned upon a question of fact. It is apparent from the opinion of Justice Butler that it was either admitted or established by the evidence that Cockrill, who was an American citizen and unrelated to the ineligible alien, took title to the property in his own name as the result of a specific agreement to hold the legal title for the alien, and that he himself had absolutely no interest whatever in the land involved. What is said in the opinion as to the presumption created by the statute, which is here assailed, is *obiter dicta* only; it was totally unnecessary to the decision because, without the application of the presumption, evidence was sufficient to show a deliberate attempt to evade the provisions of the statute by the taking of title in the name of an American citizen who never occupied the land thereafter and exercised no dominion over it, thus permitting its exclusive occupancy and unretarded control by the ineligible alien.

The *Cockrill* case held in substance that a statutory presumption, which may be overcome by evidence sufficient to raise a reasonable doubt, was constitutional under the facts of the case.

Since then, of course, the law has been amended so as to give the defendant citizen the burden of proving that the conveyance, made when he was six years of age, was not made with the intent to prevent, evade or avoid escheat. Clearly, if the rule of convenience is resorted to to justify the presumption and shifting of the burden of proof, the citizen defendant will find it no more possible or convenient

to adduce the proof than will the state. It is equally clear that the statutory provision as to presumption and burden of proof was provided because of the difficulty involved in adducing evidence to sustain the State's case.

As was pointed out in *Morrison v. California*, 291 U. S. 82, where a similar presumption was held invalid as to an American citizen, the only case in which the presumption would be of value would be in a case like the case at bar, where injustice will probably result from the invocation.

Under the law as it now exists, it is only necessary that the State prove a transfer of agricultural land has been made to this citizen child, and that his ineligible alien father provided the money furnished as consideration. Upon proof of these two facts, the land in question was escheated to the State of California because the defendant failed to prove by a preponderance of evidence that the conveyance made when he was six years old was not made with the intent to avoid, prevent, or evade escheat.

There is not an iota of evidence that the man who signed his name as grantor to the deed to this citizen petitioner of the property conveyed in 1934, or that the judge who approved the sale of the other piece of property to the child in 1937, intended to evade or avoid the Alien Property Act.

It is clear that the child was presumed to accept the benefit of the gift, and that the title to the property vested in the child. See: *Estate of Yano*, 188 Cal. 645;

People v. Fujita, 215 Cal. 166. Thus there is no evidence of any contrary intent on his part.

In effect, the *Cockrill* case recognized the general law of California that where two strangers are involved in a transaction in which one furnishes the consideration for the transfer of real property, and the property is transferred to the other, a presumption arises of a collateral agreement between these two parties that *the person furnishing the consideration has a beneficial interest in the land*.

This is a recognition of the common experience of mankind. There is clearly a rational connection between the facts established—including the fact that the parties are strangers—and the presumption of the interest in the party furnishing the consideration.

It is because of this that we have the law of resulting trusts.

Likewise, because of the experience of mankind, under the general law recognized in the State of California, no presumption of a resulting trust arises if the party furnishing the consideration and the party taking the title by the convenience are related by consanguinity.

The presumption that they intended to create a trust is deemed to be overcome, and an inference will be indulged that the party who furnished the consideration contemplated not ~~a~~ beneficial ownership in himself but an absolute ownership in the grantee, the amount of the consideration being a gift to the latter.

This is the situation where the parties are husband and wife. See:

Shaw v. Bernal, 163 Cal. 262, 124 Pac. 1012.

This is likewise true where the relationship is that of parent and child.

See:

Lezinsky v. Mason Malt Whiskey Distilling Co.,
185 Cal. 240, 196 Pac. 884;

Hamilton v. Hubbard, 134 Cal. 603, 65 Pac.
321;

Quinn v. Reilly, 198 Cal. 465, 245 Pac. 1091.

In the *Estate of Yano, supra*, and in *People v. Fujita, supra*, it was held that even though the father is an ineligible alien, no presumption of resulting trust arose from the fact of the father furnishing the consideration, despite the general law of the state as codified in Section 853 of the Civil Code, which provides:

"When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made."

So we reiterate the *Ockrill* case merely recognized the general law of resulting trust.

In the instant case because of the consanguinity, under the California law in the absence of the specific provision of Section 9 relied upon by the California Supreme Court, it would be inferred that the father

who furnished the consideration contemplated not a beneficial ownership in himself but an absolute ownership in the grantee, the minor citizen son, the amount of the consideration being a gift by the father to the son.

Since this inference of gift is the result of common experience, it follows that the presumption set up contrary to common experience, under which it is presumed that there was no gift and that the transaction was with the intent to vest the beneficial interest in the father, becomes fanciful, arbitrary and unreasonable, and therefore is unconstitutional and void.

It is, of course, fundamental that a statute valid under one set of facts may be invalid when applied to another set of facts. A question may arise as to the subject matter itself. Thus, the statute may be perfectly valid in its general application and yet be held to be void in a particular application.

See:

11 Am. Jur. 738;

Nashville v. Walters, 294 U. S. 405;

Pcindexter v. Greenhow, 114 U. S. 270.

Thus the statute, when applied to a transaction involving strangers, is consistent with the general law pertaining to resulting trusts, but when applied to a transaction involving a father and son, is in direct conflict with the law of trusts applicable where there is consanguinity between the party furnishing the consideration and the grantee named in the deed.

In *Hamilton v. Hubbard, supra*, the following language is used:

"Ordinarily, indeed, where a conveyance is made to one and the consideration paid by another, a trust is 'presumed' in favor of the latter. (Civil Code section 853.) But this presumption arises only in transactions between 'strangers to each other' (1 Perry on Trusts, section 126) and is not indulged in where the conveyance is to the 'wife or child, or other persons for whom the person paying the consideration is under some natural, moral or legal obligation to provide.' In such cases the presumption is, 'that the purchase and conveyance were intended to be an advancement for the nominal purchaser.'"

Thus it is plain that an instruction in accordance with this exception from the rule of resulting trusts that the presumption was that the father furnished the consideration for the purchase for the benefit of his son would be proper, though in conflict with the presumption raised by Section 9 of the Alien Land Law.

The Supreme Court of the United States has repeatedly indicated that there are substantial limitations upon the right of legislative bodies to replace fact by legislative fiat in the judicial determination of life, liberty or property.

In *Manley v. Georgia*, 279 U. S. 1, a statute providing that every insolvency of a bank should be deemed fraudulent and the officers responsible, and further providing that the defendant might repel the presumption of fraud by showing the affairs of the bank

had been fairly and legally administered, was held in conflict with the due process clause of the 14th Amendment.

In *Western and Atlantic Railroad v. Henderson*, 278 U. S. 577, a statute, providing that when a collision between a railroad train and a vehicle at a crossing resulted in death, a presumption arose that the railroad and its employees were negligent, and the company was liable unless it showed due care in the matters alleged against them, was held unreasonable and arbitrary and in violation of the due process clause.

In *Bailey v. Alabama*, 219 U. S. 219, a statute providing that any person entering into a contract to do work with intent to defraud and who thereby obtained payment, and without just cause and with like intent and without refund of the money advanced, refused to do the work or refund the money without just cause, constituted *prima facie* evidence of intent to defraud. The court said that the object of the statute was to hit cases destitute of inferences, but that the law required a rational relation between the facts, or the inference becomes arbitrary, and held the statute unconstitutional. (See: *O'Neill v. U. S.*, 19 Fed. (2d) 322; *Tot v. U. S.*, 319 U. S. 463, 63 S. Ct. 1241.)

In the *O'Neill* case the court held that in order for the legislature to provide such presumption of the main fact and issue, there must be:

1. Some rational connection between the fact proved and the ultimate fact presumed;

2. That the inferences from the fact proved may not be unreasonable or unnatural;

3. That the accused may not be deprived of the proper opportunity to present his defense to the main facts so presumed.

Certainly, there is no rational connection between the furnishing of the consideration for real property by the father and the conveyance of the real property to his son and the presumption that the entire transaction is fraudulent, merely because the father was an ineligible alien.

Likewise, such an inference is unreasonable and unnatural in view of the relationship of father and son, and finally, the accused son is deprived a proper opportunity to present a defense by virtue of the provisions casting upon him the burden of proof.

It should be noted that in none of these cases heretofore cited, with the exception of *Manley v. Georgia, supra*, did the statute go so far as to throw upon the defendant the burden of overcoming the presumption.

In the case of *Morrison v. California*, 291 U.S. 82, where the Alien Property Act was involved, and a presumption similar to that provided for in section 9a of the Alien Property Act was involved, the court refused to sustain the legality of such a presumption, and pointed out that under the convenience rule, it was just as convenient for the state as it was for the defendant to furnish the proof sought to be substituted for by the presumptions as it was for the defendant to prove such facts, and that to shift to the

defendant the burden of proving sufficient facts to raise a reasonable doubt (as distinguished from proving sufficient facts to outweigh the presumptions, let alone equal it), might very easily result in injustice to the defendant in the only type of cases wherein such a presumption would be of value.

Ordinarily, a rule of convenience, justifying such a shift in the burden of proof, is applied only when the subject matter is a negative averment or a fact relied upon by the defendant as a justification or a fact lying peculiarly within his knowledge. (See *People v. Quarez*, 196 Cal. 404; *People v. Whiteman*, 114 Cal. 338 at page 344.)

THE PROVISIONS OF SECTION 9 OF THE ALIEN PROPERTY ACT OF 1920 APPLIED TO A CITIZEN SON OF AN INELIGIBLE ALIEN FATHER RELEGATE HIM TO A SECOND CLASS CITIZENSHIP.

As we have heretofore pointed out, no resulting trust is presumed to arise where a father furnishes the consideration, and the deed is made to the son. This is the General Law of the State of California. Section 9 of the Alien Property Act provides by statute that a different situation shall exist in the event the son to whom the property is deeded has the misfortune to have as his father an ineligible alien.

We thus find that the children residents of the State of California are divided into two classes, insofar as property rights are concerned. These classes are:

1. **Children whose fathers are eligible to citizenship, or are citizens of the United States.** . . . Such a child, even if an alien himself, has the benefit of the general law of the State of California and his father may make a gift of real property to him by furnishing the consideration for the property, and directing that the deed run to the child, without the inhibitions of any statutory presumption, and without having shifted to him, the child, the burden of proving the intent of his father at the time the conveyance was made, was to commit a fraud upon the State of California.

2. **A citizen of the United States who has as a father an ineligible alien.** . . . As to this child, if the State of California challenges his title to real property, and the identical facts in the above paragraph are shown, a presumption arises that the intent of the father was fraudulent, and the burden of proving the innocent intent of the father shifts from the State of California to the citizen child grantee.

In the *Estate of Yano*, 188 Cal. 645, the Alien Property Act of 1920 was likewise involved. The question was whether or not a citizen child had the right to have his ineligible alien father appointed guardian of real property deeded to the child, an infant, the consideration for which had been furnished by the father because the father knew he was ineligible to hold real property.

The Act provided that no ineligible alien disqualified to hold property could be appointed guardian of a

portion of the estate of a minor consisting of property which the alien was inhibited from acquiring, and further provided that a public administrator be appointed guardian of a minor citizen whose parents are ineligible to appointment.

The court held, beginning at page 656:

"The foregoing observations apply with equal force to the proposition that the Act of 1920, taken in connection with Section 1751 of the Code of Civil Procedure, denies to the child, Tetsubumi Yano, the privileges guaranteed to her by the fourteenth amendment to the Constitution of the United States and by Section 21, Article I of the Constitution of this state. Section 21 declares that no *citizen* or class of *citizens* shall 'be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.' The child is a native citizen of the United States and of the State of California. Nothing can be denied to her because of her race or color that is not denied to all citizens regardless of race or color. Any privilege that is given generally to citizens of other races must also be given to her upon the same terms, and her race cannot be considered as a factor in the problem, or as a cause for denial thereof to her. The effect of the two laws would be that all native minor children possessed of agricultural land in this state, whose parents are aliens residing in this state and eligible to citizenship, would have the privilege of having their father or mother appointed guardian of that part of their estate; while, on the other hand, all native-born minors who are possessed of agricultural land in this state, whose parents are aliens and reside here, but are ineligible to citizenship, if a guardianship of such land is necessary or

convenient, would be compelled to have strangers as such guardians. Furthermore, while a native California child of alien Japanese parents, if over fourteen years of age, could nominate its own father as the guardian of its personal property or of its real property leased for purposes of trade or residence, solely (Code Civil Proc., Sec. 1748) it must nominate some stranger as guardian of any farming land it may own. No such burdensome disability is imposed upon any native-born child whose parents are eligible to citizenship. All such discriminations are forbidden by the constitutional provisions above mentioned.

"It is argued on behalf of respondent that the object of the law is to prevent evasions of the law forbidding aliens ineligible to citizenship to acquire, possess, or enjoy agricultural land, that the only class doing so is composed exclusively of aliens who cause land, to be vested in their own minor children, with a view of being appointed guardian of the estate of such children, and that it is permissible for the state to regard the persons who are producing the evil which it desires to prevent, as a class by themselves and to enact such measures operating only upon that class as may be necessary to accomplish the desired object, as has been pointed out in *Patson v. Pennsylvania*, 232 U.S. 138 (58 L.Ed. 539, 34 Sup. Ct. Rep. 281; see also Rose's U.S. Notes), and *Ex parte Spencer*, 149 Cal. 401 (117 Am. St. Rep. 137, 9 Ann. Cas. 1105, 86 Pac. 896.) But even in such case, as has been shown, the differences on which the classification is based must suggest a reason for the peculiar legislation and the legislation must be such as will have some tendency to remove the evil intended to be prevented. The

appointment as guardian would not enable such parents to acquire, possess, or enjoy agricultural land, and therefore their ineligibility to such appointment could not prevent their so doing. A guardian neither acquires, possesses, or enjoys the property belonging to the ward, in any accurate or legal meaning of those terms. At most, he merely has, for some purposes, the control of the property, but the control is not in his own right and does not inure to his benefit. He controls it as trustee only, and is held to strict accountability to the child for all the benefits accruing from the use of it. He must render such accounts annually, or oftener, if required by the court. (Code Civ. Proc., Secs. 1773, 1774.) He must hold all the receipts from the farming operations as the property of the native-born child, and must use so much of it for the support and education of the child as may be necessary, and no more, and must safely invest the remainder as the property of the child and for its sole use and benefit. In all of his acts as guardian he is under the supervision and control of the superior court of the county. His compensation is limited to the reasonable value of his services and is to be fixed by that court. The use is in the child, not in the guardian. When the child becomes of age the control of the guardian immediately ceases. If the child should die the control would pass forthwith to its heirs, and the alien parent, in that event, would not even inherit the property or any part thereof. It seems plain that since the alien parent could not by this means evade the operation of the law, nor acquire, possess or enjoy agricultural land, the law cannot be upheld on the ground that such persons constitute a class, and the only class, who attempt to evade

the United States, and can make such an entry conditioned upon such terms as it desires—reasonable or unreasonable.

These powers admittedly reposed in Congress by the Constitution, and exercised by Congress constitutionally, to classify aliens as those eligible for citizenship and those ineligible for citizenship, cannot constitute a basis for classification by the state which differentiates between white citizens and aliens, and which state legislation deprives the aliens of equal right.

"to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property of all citizens."

And certainly an Alien Property Act, such as ours, subjects such aliens and their citizen children to punishments, pains, penalties and exactions materially different from those to which white citizens are subjected.

Thus we find that the federal decisions have fallen into a fundamental error in that they have confused the relation of aliens to the federal government with the relation of aliens to the state government, which relations with the state governments are subject to the inhibitions against state actions included in the 14th Amendment and the Statutes of Congress heretofore referred to.

This is clearly true of the theory that the common law property disabilities of aliens justify a state statutory disability when such a state statute is in direct

conflict with the 14th Amendment and the Civil Rights statutes.

It is hard to uphold the constitutionality of the Alien Property Act upon the theory that the state has properly classified citizens, aliens and ineligible aliens, when the state, by the 14th Amendment and the Civil Rights statutes, is forbidden to make such a classification.

To say that the state's classification is constitutional, because for other purposes the United States Government can adopt such a classification, is illogical and unsound.

While it is correct that in the *Slaughter House* cases the Supreme Court by dictum indicated that the 14th Amendment and the Civil Rights statute afforded protection only to those of African nativity and descent, this dictum has long since been overruled, and the 14th Amendment and the Civil Rights statute constitute a bulwark of defense against state aggression available to any person in the United States.

See: *Kentucky v. Powers*, 201 U. S. 1.

All of the cases dealing with the various Alien Land Laws trace back to *Terrace v. Thompson*, 44 S. Ct. 15, 263 U. S. 197. In that case the Alien Land Law of Washington excluded aliens who had not in good faith declared their intentions to become citizens of the United States from the ownership of any interest in lands.

Terrace claimed he desired to lease agricultural lands to a Japanese farmer, and that the Attorney

the law forbidding alien ownership. They could not by the use of such guardianship enjoy the right of ownership. The classification is, therefore, clearly arbitrary and does not 'suggest a reason which might rationally be held to justify' the peculiar legislation addressed to the class, as is said in *Darby v. Mayor*, etc., supra.

"The object sought to be attained by the statutory provisions, that is, to discourage the coming of Japanese into this state, may be a proper one, and may be even desirable for the promotion of the welfare and progress of the state. The court can only consider its validity under the limitations of the Constitution. A similar object prompted the adoption of the anti-Chinese provisions of the Constitution of 1879, which, so far as they were effectual, were declared invalid by the Federal Courts. This entire question is international in character and is a matter properly to be disposed of by the Federal Government. Appeal for its adjustment should be made to Congress, rather than to attempt to accomplish it by discriminatory legislative measures of the state.

"Our conclusion is that the provisions of the Initiative Act of 1920 forbidding the appointment of an alien resident, ineligible to citizenship, as guardian of the farming land of his native-born child, and authorizing the removal of such parent, if previously appointed as such guardian, are invalid.

"The order appealed from is reversed."

Thus, at the time of passage of the Act, the court took judicial knowledge that its purpose was to dis-

ourage the coming of Japanese into the State of California.

Fred Oyama, in reality, is being penalized by the State of California because of qualities or conditions pertaining to his father and mother.

It is because of the racial origin of the father and mother that in the trial of his case handicaps were imposed upon him by means of presumption and the shifting of the burden of proof which would not have been imposed upon him if his father and mother had a different racial origin.

A somewhat similar situation arose in an earlier California case of *Sacramento Orphanage & Children's Home v. Chambers*, 25 Cal. App. 536, and the reasoning used by the California court is applicable to the case at bar. In that case the petitioner was the orphan asylum which sought payment under the provisions of the California *Political Code*, authorizing payment of state aid for the care of orphans.

The minor, for whom care was rendered by the orphan asylum and for which care payment was sought of the state, was a native-born citizen of California of alien parentage.

Section 2289 of the *Political Code* provided that no state aid should be rendered to a child whose parents had not resided in the state for three years, or whose parents were not citizens.

It was contended that this provision was void because it conflicted with Amendment 14 of the United

States Constitution and Section 21 of Article I of the California Constitution.

Section 21 of Article I of the California Constitution provides:

"No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens."

The court said:

"The child for whose support aid is herein sought is a citizen of this state. He was born in this state while his parents were residents thereof. It is undoubtedly true, as stated by respondent, that 'Every child born here is a citizen of the state if its parents are residents of the state. Thus, a child born here, whether its parents are citizens or aliens, immediately becomes a citizen of the United States, but its second citizenship follows the residence of its parents.' The child is and was an orphan under the age of fourteen years and was cared for by such an institution as is contemplated by said statute providing for state aid. What is the basis then, for discrimination between him and other citizens who are orphans under the age of fourteen years and under the care of the same or of similar institutions? Is it any quality of condition affecting him personally, that would make such classification reasonable and just? Is there any 'natural, intrinsic, or constitutional distinction' differentiating him from the other minor orphan citizens who are receiving and who are entitled to receive state aid? The answer, of course, must be in the nega-

tive. The distinguishing quality or condition relates not to him but to his parents. It would be a strange construction of the constitutional provisions that would permit privileges to be conferred upon one citizen of the state and withheld from another for the reason that there was a difference in the political status of the parents. Mentally, morally, and physically, no doubt, the sins and infirmities of the parents are often visited upon their descendants, but in the realm of civil and political rights and privileges no such principle can be recognized or tolerated. *To affirm the proposition contended for by respondent, that one citizen is, and another is not entitled to this privilege in consequence of the difference in the citizenship and residence of their parents is to deny all efficacy to the constitutional mandate that privileges and immunities must be granted to all citizens upon the same terms.*

"The purpose of the legislature is unquestionably a commendable one, but it must be accomplished in a legal and constitutional manner. Restrictions affecting all citizens alike might be imposed which would prevent abuse of the privilege and which would be open to no valid objection.

"If the condition of residence or citizenship related to the minor orphan himself, it probably could be said that the classification was just and reasonable and within the purview of the Constitution. No doubt the legislature might require the beneficiary to be a citizen of the state and a resident therein for a certain period. If he were not a citizen, said constitutional provisions could not, of course, be invoked, and three years might not be an unreasonable requirement as to resi-

dence. There would thus be presented in the condition and status of the minor, a just basis for valid discrimination. But that is entirely different from the requirement here as to the citizenship and residence of the parents. The injustice of the rule contended for could not be more impressively illustrated than in the present instance. If said provision as thus understood is to be enforced no aid can ever be granted to said minor for the reason that death has rendered it impossible for either of his parents to become a citizen or resident for the requisite time. No such arbitrary and extraneous discrimination is sanctioned by our fundamental law."

**SECTION 9 OF THE ALIEN PROPERTY ACT IS IN CONFLICT
WITH TITLE 8, UNITED STATES CODE ANNOTATED, SEC-
TIONS 41 AND 42.**

The little-referred to Section 5 of the 14th Amendment specifically provides for the adoption of legislation for the implementation of the amendment.

In accordance with the expressed authority conferred by this provision of the amendment, the so-called civil rights statutes were long ago adopted. Section 41 of Title 8 U.S.C.A. provides:

"All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind and to no other."

Under the provisions of this statute, it would appear that even the alien defendants are entitled to protection against such statutes as the Alien Property Act. They do not have the same right as white citizens to make and enforce contracts; they do not have the same rights as white citizens to be parties; by reason of the statutory presumptions, they do not have the same right as white citizens to give evidence, and are not accorded the full and equal benefit of all the laws providing for the security of persons and property as enjoyed by white citizens.

The three propositions in the decisions of the United States Supreme Court sustaining the constitutionality of the various Alien Property Acts which run throughout those decisions as a basic thread of reasoning are:

1. That the rights of an alien are materially different from those of a citizen;
2. That at common law, an alien had no right to become the owner of real property, and that upon office found, it would escheat to the sovereign;
3. That since Congress had divided aliens into two classifications, those ineligible for citizenship, and those eligible for citizenship, this federal act of classification was justification for a state to likewise distinguish between the two classes and prohibit the class comprised of those ineligible for citizenship from acquiring an interest in real property.

With the first proposition, we have no quarrel. Certainly, there are some matters in which citizens are distinguishable from aliens, *particularly in their relationship with the federal government.*

However, it should be remembered that the 14th Amendment governs state action, and while frequently referred to as establishing the rights of "citizens" against aggression by state government, the concluding phrases of Section 1 reads as follows:

"Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any persons within its jurisdiction the equal protection of the laws."

In those two final phrases of this amendment, as distinguished from the other phrases thereof, the people involved need not be citizens of the United States. Certainly, a resident alien of the State of California is a "person within its jurisdiction." Likewise, in the civil rights statutes adopted, pursuant to the provisions of this amendment, the protection given by the statute is given to "all persons within the jurisdiction of the United States."

The fact that under the common law an alien has no right to own real property as against the sovereign certainly cannot constitute the basis for the constitutionality of the state statute adopting the common law, when a federal statute provides that all persons within the jurisdiction of the United States shall have the same right to enforce contracts and to the benefit of all laws for the security of property as is enjoyed by white citizens.

Title 18, U. S. C. A., Section 52 provides:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains or penalties, on account of such inhabitant being an alien, or by reason of his *color* or *race*, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both."

It is clear that a statute cannot be constitutional at the same time that a person acting under the color of the law is subject of federal criminal action.

In the foregoing act, the word "alien" is used.

The third basis for the constitutionality of the Alien Property Act is that it does not improperly classify because the federal government has already classified aliens.

The 14th Amendment and the Civil Rights statute do not deal with the power or duty of the federal government, or with the rights or privileges of aliens in relation to the federal government; nor do they deal with naturalization. Congress is given specific power

"to establish a uniform rule of naturalization
."

(Article 8, Clause 4, U. S. Constitution.)

Likewise, Congress has the sole right to establish the rules for and control of the entry of aliens into

General had threatened to enforce the act against him if he entered into such a lease and would forfeit the leasehold and prosecute him criminally.

It was contended by Terrace, among other things, that the act was in conflict with the due process and equal protection clauses of the 14th Amendment. A motion to dismiss for failure to state a cause of action was granted.

The court held that alien inhabitants of a state could claim the protection of the due process clause or the equal protection clause of the 14th Amendment.

The court recognized that under the 14th Amendment, an alien, as well as a citizen, is protected against the arbitrary and capricious or unjustly discriminatory action of the state, and that the alien is protected in his right to "earn his living by following ordinary occupations of the community."

As was heretofore pointed out, it was stated that Congress has the exclusive jurisdiction of naturalization, and the state has the power to deny aliens the right to own land within its borders. (Citing cases interpretive of the common law and tracing their descent from the decision in *Fairfax's Devisee v. Hunter's Lessee*, 7 Cranch 603, 3 L. ed. 453.)

Thus we see that by pedigree these cases trace their reasoning to a decision long antedating the adoption of the 14th Amendment or the passage of the Civil Rights statutes.

Likewise, in *Terrace v. Thompson*, supra, classification by Congress of those eligible and those ineligible

for citizenship under the constitutional provision authorizing such an act, is referred to as justification for similar classification by the state. We have heretofore commented concerning this.

Truax v. Raisch, 239 U. S. 33, was cited as holding that the right to work for a living in the common occupations of the community is a part of the freedom which it was the purpose of the 14th Amendment to secure.

To own and rent land, both of which are forbidden by the Alien Property Act of California, would seem to fall within the definition of a common occupation.

Perhaps in recognition of this, we find the following language appearing in Article 1, Section 1 of the Constitution of California:

“All men . . . have certain inalienable rights, among which are those of . . . acquiring, possessing and protecting property. . . .”

Despite this language, it is a criminal offense—a felony—for this American citizen child to allow his alien father to remain or go upon the land to farm or cultivate the same and enjoy directly or indirectly the beneficial use of the lands, the crops or the proceeds from the sale of the crops. (See Section 11a of the Alien Property Act of 1920.)

Thus, we find a further discrimination against this American citizen as contrasted with other children who are permitted to have their fathers manage and cultivate their farms and to remain upon and go upon and participate in the crops and in the proceeds therefrom.

As a general rule, children in the State of California are entitled to support and maintenance by their fathers, and the father is required to make provision for them, but the act of the father of Fred Oyama in making provision for him, which would have been deemed meritorious, were it not for his status as an ineligible alien, is presumed to be a fraud; and the child is deprived of his property by reason of this statutory presumption, arising from a transaction in which he had no part, except to be the passive recipient of a gift, and concerning the facts contemporaneous with the transaction, in view of his six years of age, he must have had no personal knowledge.

Let us point to the situation under the Alien Property Act, which we believe demonstrates the fanciful and arbitrary nature of the statutory presumption.

If the ineligible alien father furnishes the consideration for the purchase of commercial or residential property, and the deed names his American citizen child as grantee, the general law of California is applicable and an inference is drawn that the consideration was intended as a gift.

No resulting trust is presumed to arise, even though under the law the ineligible alien actually could legally acquire an interest in such residential or commercial property.

Yet, under identical circumstances with the lone exception that the property involved is agricultural in nature, a statutory presumption arises that the conveyance was made with the intent to prevent or evade the Alien Property Act.

Under the phraseology of the act, it would seem that there must be some evidence that the grantor and the grantee intended to evade the act. Yet, in the case at bar, there is no evidence of the intention of the grantor, or the six year old grantee, or of the man furnishing the consideration, save and except a statutory presumption, which apparently is construed to supply evidence of the intent of each of the three.

Under any rational theory, the fact that the father himself was ineligible to become the owner of agricultural land would seem to strengthen the general law that no resulting trust arose. (*Ped. v. Fujita, supra.*)

THE ENFORCEMENT OF THE LAW BY THE STATE OF CALIFORNIA HAS BEEN ARBITRARY AND DISCRIMINATORY.

This Honorable Court is entitled to take judicial notice of the officially reported decisions of the appellate courts of the State of California.

In the reported decisions of the appellate courts of California are a number of cases in which the Alien Property Act of California is involved.

No case appears in which the state has sought the escheat of land under the provisions of the Alien Property Act, unless the basis for the escheat was that the party furnishing the consideration for the transfer of the land was of Japanese ancestry.

This court can likewise take judicial notice of the fact that under the naturalization laws of the United States, there are other nationalities than Japanese

who are ineligible to citizenship, and that over the years since the passage of the original act in 1913, there has been a greater number of nationalities ineligible to citizenship than there are presently. For instance, it is only recently that those of Chinese nationality are permitted to become naturalized.

It is true that some of these reported cases have interpreted the Alien Property Act as being applicable to races other than the Japanese. Not one of these is an escheat case.

It can be demonstrated by a review of the reported cases pertaining to the Alien Property Act that in cases where land was held by persons ineligible to own such land under the provisions of the Alien Land Act no action to escheat said property was instituted by the state, even though such persons in other litigation between themselves and parties, other than the State of California, had admitted that they had purchased the land in violation of the Alien Property Act, and that the conveyance was made to prevent or evade the escheat provisions of the act.

Before 1923, where an ineligible alien took title to agricultural land, he obtained a defeasible title. His right to the land, even though he was an ineligible alien, was subject to attack only by the state. Because he had a defeasible title, if he transferred title prior to the institution of an action to escheat and transferred it to a person who was not subject to the ineligibility clauses of the Alien Property Act, such grantee obtained a good and invulnerable title. (*Suwa v. Johnson*, 54 Cal. App. 119.)

In 1923 the Alien Property Act was amended to provide that the title escheated as of the date of conveyance made with the intent to evade the act.

This was upheld in *People v. Oyama, supra*, the court holding that:

"Property which the citizen never had he could not lose, and as the land escheated to the state instanter, he acquired nothing by the conveyance, and the Alien Land Law took nothing from him."

Since the *Oyama* case also held that no statute of limitations applies where land had escheated under the provisions of the Alien Land Act, any property conveyed or sought to be conveyed with the intent to evade the act since 1923, is now the property of the State of California under the theory of the State of California.

We therefore turn to the California Reports. The case of *Takeuchi v. Schmuck* is reported in 206 Cal. at 782 (1929). There, the plaintiff, an American citizen of Japanese ancestry, sued to recover a deposit made for the purchase of real property.

"The trial court denied recovery to the plaintiff on the theory that plaintiff's father paid the amount of the deposit and taxes in the accomplishment of an illegal conspiracy between the father and daughter, a minor, 17 years of age, whereby legal title to said property should be held by the daughter, but the entire beneficial interest vested in the father, an alien ineligible to citizenship, in violation of the provisions of the Alien Land Law. Statute of 1923, page 1020.)"

The court upheld the findings of the trial court that there had been a conspiracy participated in by the father and daughter to violate the provisions of the Alien Land Law.

The court refused to uphold the conclusion of the trial court that Schmuck and his wife were not parties to the conspiracy and stated:

"The rights of the parties must therefore be determined as between persons *in pari delicto*";

The court, referring to Mr. and Mrs. Schmuck, said:

"They were conspirators in an attempt to violate the statute in the same sense as were the Japanese father and daughter with whom they dealt . . ."

A review of the digest of cases in California discloses that at no time was an action ever brought against Schmuck to declare this property escheated to the State, despite the findings of the highest court in the State of California that they entered into an agreement for the conveyance of land with the intent to evade the Alien Land Law.

This land in Imperial County still remains unclaimed by the state.

In the case of *California Delta Farms, Inc. v. Chinese American Farms, Inc.*, 204 Cal. at page 524, 3400 acres of agricultural land in San Joaquin County were involved. The purchase price was approximately \$900,000. Under an executory transaction, the final installment matured in 1928. On September 15, 1924, an action was begun by the plaintiff to declare for-

feited all rights of the defendant Chinese American Farms, Inc., under this contract whereby the plaintiff agreed to sell, and the defendant to buy, the 3400 acres of agricultural land.

The defendant, after denial of default, set up among other defenses the enactment in 1920 of the Alien Land Act, effective December 9 of said year, contending that thereby the consideration for all unexecuted portions of the contract became illegal and in violation of the penal provisions of the said statute.

It has been held in *Mott v. Cline*, 200 Cal. 434, that the executory provisions of a contract for the sale of land under an option of purchase were within the prohibitory language of the Alien Property Act, and a conveyance in accordance with the option would escheat the property.

A companion case, entitled *California Delta Farms, Inc. v. Chinese American Farms, Inc.*, is reported in volume 207 California Reports at page 298 (1929).

The opinion contains a comprehensive statement of the facts involved. There is a recital of pleading in which it was alleged by the defendant that the plaintiff, at the time they entered into an agreement to sell the 3400 acres of agricultural land, knew that the \$50,000 paid upon the contract prior to the formation of the corporation was more than 80 per cent advanced by Chinese aliens, and that after the corporation was formed and the contract was transferred to the corporation, that 80 per cent of the outstanding stock was actually, equitably and beneficially owned by aliens ineligible to citizenship, and that this situa-

tion continued throughout the time covered by the contract.

It further appears in the pleading, as recited in the opinion of the Supreme Court, that after the Alien Land Law was adopted and amended in 1923, the entire contract became impossible of performance, and that the agreements and understandings, plan, and scheme of the plaintiff and defendant corporation to effect a transfer of the property mentioned in the agreement

"became and were and now are in violation of the terms and provisions of the Alien Land Law of 1920 and 1923". (See page 303.)

The trial court found that 95 per cent of the stockholders were Chinese aliens ineligible to citizenship; that the entire land was agricultural land; that the defendant corporation was organized for the purpose of taking over the contract for the sale of land, and that it was known to the plaintiff that ineligible aliens would be the owners to some extent at least of said stock, and that 80 per cent of the first payment on the contract was made by ineligible aliens. The court said:

"The completion of this contract would form conclusive proof of a conspiracy under the act if the plaintiff possessed knowledge of the extent of ownership of defendant stock by ineligible aliens". (See pages 305 and 306.)

The court stated:

"It may be that respondent is not *in pari delicto* with appellant as to matters occurring subsequent to December 9, 1920."

One searches the reports of California in vain for any record of an attempt by the state to escheat these 3400 acres of agricultural land in San Joaquin County.

This, despite the opinion of the Supreme Court of the state that the appeal

"is controlled by the provisions of the Alien Land Law which became effective December 9, 1920 (Statute of 1921), and particularly by section 10 thereof . . .".

Section 10 made it a crime for two or more persons to conspire to effect a transfer of real property or of an interest therein in violation of the Alien Land Law.

The case of *People v. Entriken* is reported in 108 Cal. App. 29. There Entriken was found guilty of conspiring with an alien Japanese in the making of a lease of agricultural lands in violation of the Alien Land Law.

The Japanese testified as a witness for the People.

In July, 1928, the alien Japanese entered into possession of the land and began to farm it. In November, 1928, a written lease was signed by Entriken, and the lessee's name was signed by the alien Japanese, without authority.

The alien Japanese continued to farm the land with the knowledge of Entriken.

Despite this conviction in a criminal proceeding of violation of the Alien Land Law, no proceedings appear of record wherein the State of California sought to escheat the land of the Caucasian landlord, after proving the evasion beyond a reasonable doubt.

The events pertaining to the transaction resulting in the case of *People v. Nakamura*, 125 Cal. App. 268, decided in 1932, are still more illuminating as to the course of action adopted by the state.

An action seeking the escheat of land was brought against the defendants Ono and Nakamura and others. It was claimed that the defendants purchased agricultural land in San Diego County and had the land conveyed to Nakamura, a citizen of Japanese ancestry.

The transaction occurred in 1926.

Delpy was alleged to have been paid \$6,000 by the alien defendants on account of the purchase price of the land.

It was alleged that alien defendants entered into possession and that all of the acts of all of the defendants, including Nakamura, were with the intent to violate and evade the Alien Property Act. Judgment was entered for the defendants for lack of competent proof in support of certain allegations.

The state appealed from the judgment upon the ground that error had been committed in sustaining defense objections to taking testimony from the defendants under the provisions of section 2055 of the Code of Civil Procedure.

The judgment was reversed.

In 1937, the District Court of Appeal decided the case of *Delpy v. Ono*. (See 22 Cal. App. (2d) 301.) The same land in San Diego County and the same defendants were involved. In 1931 the appellant, Delpy, received from Nakamura, the title holder, a note for

the balance of the purchase price secured by a trust deed on the property. The action for escheat was still pending. In 1934 Nakamura, the title holder till then, conveyed 20 acres of the land to each of the four citizens of minor age, all citizens of the United States.

The appellant Delpy alleged he was the owner of the trust deed and had pursued the proper course after default thereunder, and the trustee had issued its deed conveying the property to him, Delpy.

The action was one in an unlawful detainer to secure the possession of the land.

"In their answer, the respondents attacked the validity of this trust deed by setting forth allegations tending to show that the transaction was from the beginning a conspiracy between the parties to evade the Alien Land Law, and that it was entered into and carried out with that intent and purpose in mind." (See page 302.)

The trial court made findings sustaining these allegations of the answer and concluded Delpy was not entitled to relief.

The appellate court held the evidence in support of the attack upon the validity of the trust deed and the note secured thereby was inadmissible and the findings in connection therewith lent no support to the judgment, and for that reason it was reversed.

Again the records disclose no attempt to escheat the land despite the findings of the trial court that the transaction pertaining to it were entered into with the intent to evade the Alien Land Law.

Thus, we have two cases in which courts have found that Japanese have conspired with Caucasians to violate the Alien Property Act. In one case the Caucasian was a landlord who made a lease in violation of the act. Under the provisions of the act, the fact that he made the lease constituted sufficient grounds to escheat the land, but no attempt was made to enforce the provisions of the act against the Caucasian land owner, and he or his successors in title still hold the land, even though under the provisions of the law there was an escheat *instanter*. This is the *Entriken* case, *supra*.

In the *Delpy* case, an actual attempt was made to deprive the Japanese of the land. (See: *People v. Nakamura, supra*.)

However, thereafter, *Delpy* reacquired title in accordance with the provisions of the deed of trust, the execution of which was claimed to be a part of the conspiracy to evade the Alien Property Act with *Delpy*, one of the conspirators.

Once the title to the very land involved in the escheat action in the case of *People v. Nakamura, supra*, was back in the hands of the Caucasian *Delpy*, the state ceased its attempt to enforce the provisions of the Alien Property Act and left the Caucasian co-conspirator in possession of the land.

It is hard to imagine any more dramatic or certain demonstration of the arbitrary and discriminatory nature of the enforcement of the Alien Property Act.

In the *Entriken* case the state, if its position is sound, has been the owner of the land since 1928. The

District Court of Appeal in 1930 affirmed the conviction of Entriken which meant that they found evidence sufficient to establish beyond a reasonable doubt that Entriken had violated the Alien Property Act by leasing his land to an ineligible alien.

In the *Nakamura* case, the state, if its position be sound, has been the owner of the land since 1926.

The actions of the state towards these Caucasian land owners, who violated the provisions of the Alien Property Act, are certainly confirmatory of the situation of which the Supreme Court of California took judicial notice when it used in the course of its decision in the *Estate of Yano, supra*, the following language:

"The objects sought to be attained by the statutory provisions, that is, to discourage the coming of Japanese into this state, may be a proper one and may be even desirable for the promotion of the welfare and the progress of the state. The court can only consider its validity under the limitations of the Constitution. A similar object prompted the promotion of the anti-Chinese provisions of the Constitution of 1879, which, so far as they were effectual, were declared invalid by the federal courts."*

*In regard to the anti-Chinese legislation, and in particular to the attempts to conceal the discriminatory purpose by adopting such phrases as "ineligible to citizenship" or "electors" or "any and all persons", see the anti-Chinese Land Law of California and ten other states, 35 California Law Review, page 7, at 51, 52, and 53. See also the Appendix A, beginning at page 54 which deals particularly with the anti-Chinese legislation of California.

See also the article entitled "California Alien Land Law and the 14th Amendment" in the same issue, California Law Review, page 61.

In 1935 the Supreme Court had before it *Babu v. Petersen*, 4 Cal. (2d) 276. This involved the ownership of 20 acres of agricultural land in the County of Butte. All parties, except one American and one Spaniard, were members of the Hindu race and admittedly ineligible to citizenship, and therefore within the prohibitory clauses of the Alien Land Law. Babu sought to foreclose a mortgage executed by Helen Petersen in 1927.

Mrs. Petersen answered and cross-complained and pleaded the ineligibility to citizenship of the Hindu parties and the agricultural nature of the land.

"She alleged that said persons last named conspired together to violate the Alien Land Law of this state by colorable transfers to prevent escheatment of said real property to the State of California, . . ." (pages 279 to 280).

The trial court found that Helen Petersen was not a party of the conspiracy to evade the Alien Land Law. Despite this finding of the trial court upon appeal,

"The testimony of said attorney, Memill, Babu and even Helen Petersen and her mother cannot be read and reconciled with any other rational conclusion than that Helen and her mother, who were identified with the Hindu colony, were guilty participants in the transaction which placed Babu and Memill in the occupancy and possession of said agricultural lands." (See page 288.)

Again the court said:

"It seems very clear upon the case presented that all of the parties to this action are *in pari delicto* . . ."

The court reversed the judgment, giving to Mrs. Petersen a writ of possession because of her participation in her conspiracy to evade the Alien Land Law and concluded its opinion with these words:

"The state in a special proceedings is the only party that may maintain an escheat proceeding. Section 7 of said action provides:

'The Attorney General or District Attorney of the proper county shall institute proceedings to have the escheat of such real property adjudged and enforced. . . . Upon the entry of final judgment in such proceedings the title to such real property shall pass to the State of California as of the date of such acquisition in violation of the provisions of this act.' " (Page 289.)

Despite this open invitation by the highest court in this state, no escheat action has ever been brought involving these lands.

Thus we see that under the doctrine enunciated in *Yick Wo v. Hopkins*, 118 U. S. 356, since we have a situation where the law has been administered with an unequal and evil hand, the judgment should be reversed.

Since the beginning of the war with Japan, many proceedings for the escheat of land have been instituted in the various counties of California against persons of Japanese ancestry. Only after repeated attacks upon the unequal administration of the law has an action for escheat ever been instituted, unless based upon the Japanese ancestry of the parties involved in the transaction. Despite the repeated find-

ings of the Supreme Court in the cases heretofore referred to that transactions had been entered into for the purpose of evading the provisions of the act, no attempt has even been made to seize the land, unless it was claimed that the beneficial ownership was in one of Japanese ancestry.

This is particularly pertinent in view of the fact that the Supreme Court in *People v. Oyama, supra*, has decided that the provisions of Section 315 of the Code of Civil Procedure which reads as follows:

"When The People Will Not Sue. The People of this state will not sue any person for or in respect to any real property or the issues or profits thereof by reason of the right or title of the People to the same unless

• 1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced; or

2. The People, or those from whom they claim, shall have received the rents and profits of such real property or some part thereof within the space of ten years,"

will not protect Fred Oyama in his claim to title, even though the title has stood continuously in his name in excess of the statutory ten-year period.

Surely, the officers of the State must be assumed to have notice of the official reports of the state Supreme Court and the District Courts of Appeal.

Under this interpretation of the law that no statute of limitations protects title as against an action for escheat, no reason appears for the failure of the

state to proceed against lands involved in the cases referred to where it has been testified or pleaded that the transaction was entered into with the intent to evade the Alien Land Act and where the trial courts and appellate courts have found that the transactions were entered into with such intent, except that in those cases the parties involved were not of Japanese ancestry.

We therefore respectfully submit that on each of the grounds set forth in this brief the Alien Property Act of California is unconstitutional because of its substance and because of the manner in which it has been administered, and that judgment should be reversed.

Dated, San Francisco, California,
October 15, 1947.

WILLIAM E. FERRITER,

JAMES C. PURCELL,

*Attorneys for Amicus Curiae,
Civil Rights Defense Union
of Northern California.*

HENRY TAKETA,
Of Counsel.

(Appendix Follows.)

Appendix.

Appendix

The pertinent provisions of the Alien Land Law as amended are as follows:

"ALIEN PROPERTY INITIATIVE ACT OF 1920. * * *

"1. Rights of aliens eligible to citizenship. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property, or any interest therein, in this State and have in whole or in part the beneficial use thereof, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this State.

"2. Rights of other aliens. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy, use, cultivate, occupy and transfer real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the manner and to the extent, and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise. * * *

"7. Escheat of property acquired in fee; Manner of institution of proceedings; Cooperation of district attorney or county counsel; Supervision by Attorney General; Time of passage of title; Application of Secs. 2, 3 and 7; Land acquired in enforcement of mortgage. Any real property hereafter acquired in

fee in violation of the provisions of this act by any alien mentioned in Section 2 of this act, or by any company, association or corporation mentioned in Section 3 of this act, shall escheat as of the date of such acquiring, to, and become and remain the property of the State of California. The Attorney General shall institute proceedings to have the escheat of such real property adjudged and enforced in the manner provided by Section 474 of the Political Code and Title 8, Part 3 of the Code of Civil Procedure. When requested by the Attorney General it shall be the duty of the district attorney or the county counsel of the proper county to join him in the enforcement of all the provisions of this act and in the investigation of violations thereof and the instituting and carrying on of escheat proceedings under this section. The Attorney General shall supervise the work of the district attorneys and county counsel in all such matters. Upon the entry of final judgment in such proceedings, the title to such real property shall pass to the State of California, as of the date of such acquisition in violation of the provisions of this act. The provisions of this section and of Sections 2 and 3 of this act shall not apply to any real property hereafter acquired in the enforcement or in satisfaction of any lien now existing upon or interest in such property so long as such real property so acquired shall remain the property of the alien, company, association or corporation acquiring the same in such manner. No alien, company, association or corporation mentioned in Section 2 or Section 3 hereof shall hold for a longer period than two years the possession of any agricultural land

acquired in the enforcement of or in satisfaction of a mortgage or other lien hereafter made or acquired in good faith to secure a debt. * * *

"9. *Conveyance to prevent escheat.* Every transfer of real property, or of any interest therein, though colorable in form, shall be void as to the State and the interest thereby conveyed or sought to be conveyed shall escheat to the State as of the date of such transfer; if the property interest involved is of such a character that an alien mentioned in Section 2 hereof is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

"A *prima facie* presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:

"(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof. * * *"

Deering's California General Laws, 1944 Edition, Vol. 1, Act 261, pp. 129 et seq.

FILE COPY

Supreme Court of the United States
OCTOBER TERM 1947

IN THE
Supreme Court of the United States

OCTOBER TERM 1947

No. 44

FRED Y. OYAMA AND KAJIRO OYAMA,
Petitioners,
vs.

STATE OF CALIFORNIA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA

**BRIEF OF AMERICAN CIVIL LIBERTIES UNION, AS
AMICUS CURIAE**

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae.

MORRIS GRUPP,
of the California bar,

EDWIN BORCHARD,
of the Connecticut bar,

REUBEN OPPENHEIMER,
of the Maryland bar,

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OSMOND K. FRAENKEL,
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NEIL PETERSON,
of the Oregon bar,

HAROLD EVANS,
of the Pennsylvania bar,

BENJAMIN KIZER,
of the Washington bar.

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Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA

**MOTION FOR LEAVE TO FILE BRIEF AS
*AMICUS CURIAE***

MAY IT PLEASE THE COURT:

The undersigned, as counsel for the American Civil Liberties Union respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *Amicus Curiae*. The consent of the attorney for the petitioners to the filing of this brief has been obtained. Counsel for respondent has failed to give his consent.

Special reasons in support of this motion are set out in the accompanying brief.

ARTHUR GARFIELD HAYS,
General Counsel,
American Civil Liberties Union.

October 18, 1947.

IN THE
Supreme Court of the United States

OCTOBER TERM 1947

No. 44

FRED Y. OYAMA and KAJIRO OYAMA,

Petitioners,

vs.

STATE OF CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA

**BRIEF OF AMERICAN CIVIL LIBERTIES UNION,
*AMICUS CURIAE***

Interest of American Civil Liberties Union

The American Civil Liberties Union hereby requests this Court to permit it to participate as *amicus curiae* in the instant case. The American Civil Liberties Union holds as one of its prime objectives the elimination of racial discrimination and it believes that the case at bar involves a highly significant instance of such discrimination.

Summary of Case

By a judgment of October 31, 1946, the Supreme Court of California affirmed the grant of a petition by the State

of California for a declaration of the escheat to the State of California of land held by petitioners (R. 121, 65-67). The basis for the Supreme Court's judgment upholding the escheat was the conclusion that petitioner K. Oyama had owned, possessed and used the land in violation of the Alien Land Law of California (R. 117, 61). Such law prohibits the ownership or use of land by aliens ineligible to citizenship, and provides for escheat in the "case of violation of this prohibition."¹ Petitioner K. Oyama is admittedly an alien of Japanese origin and was and is thus ineligible to citizenship under the Federal statute respecting naturalization, both as such statute existed at the time of the purchase and as it exists at the present time. Aside from the individual characteristics required for naturalization, eligibility has been and is based upon ethnic origin. At present, as a result of recent amendments liberalizing the naturalization statute, the only ethnic group whose members reside in this country in a substantial number and are ineligible for naturalization, is the Japanese.²

In addition to various arguments of State law, the petitioners argued that the Alien Land Law under which the land escheated was, because of its purpose, effect and application, an unconstitutional racial discrimination

1. Alien Property Initiative Act of 1920, California Stats. 1921, p. Ixxxiii, as amended; 1 Deering's Gen. Laws, Act 261.

2. The effect of these provisions of the Alien Land Law which were applied to petitioner Fred Oyama, the American son of K. Oyama, is fully developed in petitioners' brief, and we shall therefore here only consider the unconstitutionality of the prohibition of land ownership or use by the specified category of aliens.

3. The ethnic groups to which naturalization was limited prior to amendment of the statute in 1943 were "white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere" (Law of Oct. 14, 1940, c. 876, Title I, Subchap. III, §303, 54 Stat. 1140); the statute at present also permits naturalization of "Chinese persons or persons of Chinese descent and persons of races indigenous to India" as well as "descendants of races indigenous to the continents of North or South America or adjacent islands

under the Fourteenth Amendment to the Constitution of the United States.⁴ The California Supreme Court, relying on decisions of this Court, rejected this argument and held that the Alien Land Law did not violate the Constitution of the United States. One Justice concurred in the judgment stating: "I concur in the judgment on the ground that the decisions of the United States Supreme Court cited in the main opinion are controlling until such time as they are reexamined and modified by that court" (R. 120).

and Filipino persons or persons of Filipino descent" (United States Code, Title 8, Sec. 703). While members of some races indigenous to the Eastern Hemisphere other than the Japanese continue to be excluded from citizenship, there are no substantial number of persons of such other races in the United States. In addition to ineligibility on racial grounds, aliens may, of course be ineligible on the basis of their individual conduct; that is, for example, deserters from the army or draft evaders are ineligible (See United States Code, Title 8, Sections 704 to 707).

4. It was assumed by petitioners and it is here assumed by *amicus* that the racial discrimination practiced by the Federal Government with respect to naturalization is constitutional. It is generally so considered on the ground that naturalization is a privilege which the Federal Government has no obligation to confer, but can confer or withhold arbitrarily on racial or any other bases. This rationale does not of course apply to a denial to aliens of the use of land because such use is a right protected by the due process and equal protection clauses of the Fourteenth Amendment. See *Terrace v. Thompson*, 263 U. S. 497; *Porterfield v. Webb*, 263 U. S. 225, which recognized this principle, but which, we shall maintain, did not correctly apply it.

ARGUMENT

I

The racial discrimination of the California Alien Land Law violates the Constitution of the United States; the decision of the California Supreme Court upholding such law should be reversed and the decisions of this Court on which the Court below relied should be overruled. The law is unconstitutional not only because it does not meet the standard that a racial discrimination is invalid unless it is required to meet a grave danger to the State, but also because it does not even meet the lesser standard of having a "rational basis". The law involves a wholly arbitrary classification which lacks relevance to any valid objective.

The racial discrimination in the Alien Land Law is blatant and incontrovertible. This law was enacted as an anti-Oriental, and primarily as an anti-Japanese, measure. Its purpose was "to reserve the State for American labor and American landlords," "to keep out people we don't want, particularly the Japanese"⁵ and to express "the feelings of the people of the coast towards Orientals".⁶ The phrase "ineligible to citizenship" was merely a convenient method of designating the racial

5. Statement of California delegation to Congress, quoted in Fresno (California) Republican, May 15, 1913.

6. Statement of State Senator Anthony Caminetti, one of sponsors of the law, quoted in Fresno Republican, April 22, 1913.

7. Statement of Governor of California upon signature of Alien Land Law, quoted in Fresno Republican, May 15, 1913.

group.⁸ That the law was passed because of opposition to the Japanese entering and settling in California, rather than because of concern with their citizenship status, has at all times been admitted, and in fact asserted, by the sponsors and proponents of the Alien Land Law; and that the law was enacted to discriminate against this group because of race rather than concern with its citizenship status seems beyond doubt. And even without considering the purpose of the law to discriminate against the Japanese race, it is to be noted that whether or not the Alien Land Law affects an alien necessarily varies with his race since eligibility to citizenship so depends.

The California Supreme Court in the instant case relied upon this Court's decisions in 1923 upholding the California Alien Land Law in *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313 and *Frick v. Webb*, 263 U. S. 326, all of which in turn relied upon *Terrace v. Thompson*, 263 U. S. 197. The law of the State of Washington in issue in the *Terrace* case prohibited land ownership by any alien who had not declared his intention to become a citizen and the restriction was not limited to aliens ineligible for citizenship. While this law was, like the California law, "anti-Oriental" in purpose and effect, since Orientals were the most substantial class of aliens in the State of Washington who were unable under Federal law to declare such intention, the Court, by Mr. Justice Butler, was able to ignore this aspect of the law because

8. See argument of Attorney General for the State of California in *Porterfield v. Webb*, 263 U. S. 225, 229; *Estate of Yano*, 188 Cal. 645, 658, 206 Pac. 995, 1001. See also Fourth Interim Report of the Select Committee Investigating National Defense Migration of the House of Representatives, House Report No. 2124, 77th Cong., 2nd Sess., pp. 72-85; McWilliams, Prejudice (1944), 45-66; Konvitz, The Alien and Asiatic in American Law (1946), 158-159. The Japanese succeeded the Chinese as a subject for political capital in California. Fourth Interim Report, and McWilliams, loc. cit.; Pajus, The Real Japanese California (1937), 167; Mears, Resident Orientals on the American Pacific Coast (1927), 398; Trent, Japan and the United States (1928), 281.

of its broad phraseology.⁹ Mr. Justice Butler dismissed the question of a violation of the due process clause by stating that it was not violated by a law "applying alike and equally to all aliens" (263 U. S. at p. 218); and as to equal protection he stated:

"Appellant's contention that the state act discriminates arbitrarily against * * * ineligible aliens because of their race and color is without foundation. All persons of whatever color or race who have not declared their intention in good faith to become citizens are prohibited from so owning agricultural lands" (263 U. S. at p. 200).

When the California Alien Land Law came before the Court, the facts that its prohibition on land ownership or use was directed solely at aliens ineligible for citizenship and that the Attorney General for the State of California made it clear in argument that it was anti-Oriental in purpose¹⁰ were cursorily dismissed. The Court, again by Mr. Justice Butler, said in the *Porterfield* case:

"There (in *Terrace v. Thompson*) the prohibited class was made up of aliens who had not in good faith declared their intention to become citizens. The class necessarily includes all ineligible aliens and in addition thereto all eligible aliens who have failed to so declare. In the case now before us the prohibited class includes ineligible aliens only. In the matter of classification, the States have wide discretion * * *. We cannot say that the failure of the California Legislature to extend the pro-

9. This was despite the fact that counsel for the State of Washington argued in support of the law that "in the field of agriculture the American and Oriental cannot compete" and if not for the law the people of the State might "become entirely dependent upon alien races". See Summary of argument, 263 U. S. at 209.

10. *Porterfield v. Webb*, 263 U. S. 225, 229.

hibited class so as to include eligible aliens who have failed to declare their intention to become citizens of the United States was arbitrary or unreasonable."

Such a superficial and unconsidered approach to a question of racial discrimination is not in accord with the recent decisions of this Court. And in view of this Court's knowledge of the purpose and effect of the California Alien Land Law, its general awareness of the problem of racism, and its specific knowledge and awareness of this problem in relation to the West Coast Japanese, it cannot close its eyes to the fact that the California Alien Land Law in its purpose, effect and application discriminates against persons on a racial basis and particularly against those of the Japanese race. Whether a law discriminates by explicit terms against a racial group or is more subtle in its phraseology is immaterial. The crucial consideration is whether there is an inescapable correlation between a person's standing under the law and his race. See *Lane v. Wilson*, 307 U. S. 268; *Hill v. Texas*, 316 U. S. 401; *Norris v. Alabama*, 294 U. S. 591; compare *Korematsu v. United States*, 323 U. S. 214, 216. For a distinguishing characteristic in addition to color and name can be found for any racial group with which lawmakers wish to deal.

When "legal restrictions . . . curtail the civil rights of a single racial group [they] are immediately suspect . . . courts must subject them to the most rigid scrutiny"; for racial discrimination is justified only "under circumstances of direst emergency and peril". *Korematsu v. United States*, 323 U. S. 214, 216, 220. See also *Hirabayashi v. United States*, 320 U. S. 81; *United*

States v. Carolene Products Co., 304 U. S. 144, 152. To put the import of this Court's decisions on racial discrimination in terms of presumptions, there is, instead of the usual presumption in favor of statutory validity, a strong presumption against the validity of a racial discrimination and this presumption can only be overcome by a showing of urgent necessity therefor.¹⁴ Thus the Supreme Court of California was in error in relying on the decisions of this Court which were not based on a rigid scrutiny of the necessity for the racial discrimination (R. 114-115), and in deciding that "it is sufficient if a rational basis is found for the classification" contained in the Alien Land Law (R. 117).

The grounds to which the Supreme Court of California adverts as justification for the Alien Land Law are, we submit, far insufficient to justify the racial discrimination involved therein under the standard enunciated in this Court's recent decisions and can not in fact even be deemed to furnish a "rational basis" for it. The California Court relies in part on a previous decision in which it stated that the farming of land by ineligible aliens would cause citizens to be deprived of its use and that "racial distinctions may furnish legitimate grounds for classifications under some conditions of social or governmental necessities" (R. 114). This justification for the discrimination must, it would seem, be rejected out of hand. For the State may not prefer persons of one race to those of another with respect to the use of land, nor is the use of land a privilege which may be arbitrarily granted to citizens

14. Compare the treatment of statutes involving rights "vital to the maintenance of democratic institutions" (*Schneider v. Irvington*, 308 U. S. 147, 161), other than the right to racial equality, in the *Schneider* case; *Thornhill v. Alabama*, 310 U. S. 88, 95; *West Virginia State Bd. of Education v. Barnette*, 319 U. S. 624, 639; and in *Thomas v. Collins*, 323 U. S. 516, 527, 529-532.

as opposed to aliens; even the previous decisions of this Court on the Alien Land Law recognized that the use of land is a right protected by the due process clause which can only be affected for the public welfare.

In the other justification relied on by the Supreme Court of California in support of the Alien Land Law, it followed this Court's 1923 decisions with regard thereto; it relied on the connection between the prohibition imposed by the law and the State's interest in the use of land by those upon whose allegiance and interest it could rely. We maintain that this connection would not even justify a law prohibiting land use by all aliens or by all non-declarant aliens, even though in such a case the law would not involve racial discrimination and it would be constitutional if a mere rational basis for it existed. For this speculative reasoning as to the effect of alien land use on the strength of the State, as again the actualities as to the loyalty of aliens¹² and the methods of dealing with alien enemies in war-time, does not seem to furnish a rational basis for a prohibition of landholding by aliens. In any event, where the prohibition falls, as in the case at bar, upon a racial group, it is unconstitutional unless the facts are presented showing a real, urgent and immediate danger to the State which the prohibition is designed to meet. Certainly no such showing of this law has, or can be offered. (Compare the factual showings in the *Hirabayashi* and *Korematsu* cases.)

But even assuming that the State's interest in landholding exclusively by citizens or declarant aliens were sufficient to justify a racial discrimination imposed to advance this interest, the California law is nevertheless unconstitutional.

12. See *Ex parte Kawato*, 317 U. S. 69, 73.

For the California law prohibits land-holding by ineligible aliens while it permits it by other non-declarant aliens. Yet, to argue that the loyalty of an alien ineligible to citizenship is less than that of an alien eligible for citizenship who has not attempted to attain it, would be mere sophistry; in fact, the opposite would appear to be true. Thus, even on the basis of the narrow scope assigned to the equal protection clause, and even apart from the special scrutiny required with respect to a law establishing a racial discrimination, the California law must be invalidated. For by prohibiting land use by ineligible aliens and permitting it by other non-declarant aliens, California has struck at a class which is not distinguishable from another on even "a rational basis". Thus it is not attacking an evil which is greater or more urgent than another (*Hirabayashi v. United States*, 320 U. S. 81, 101), but arbitrarily singling out one aspect of an alleged evil. Compare *Radice v. New York*, 264 U. S. 292, 298. In any event, even if the distinction between ineligible aliens and other non-declarants were sufficient to justify a prohibition aimed solely at the former under ordinary equal protection tests, the distinction is insufficient to justify such prohibition where it effects a racial discrimination.

The decision of the Supreme Court of California is erroneous under the Constitution both because the factual showing as to the danger to the State arising from land use by non-citizens is insufficient to justify a racial discrimination and because there is an insufficient factual showing as to the danger arising from the class of non-citizens upon whom the prohibition is imposed as distinguished from other non-citizens.

II

The California Alien Land Law is invalid under a treaty of the United States: the United Nations Charter.

The United Nations Charter, duly ratified and adopted by the United States, asserts that "the United Nations shall promote * * * universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race * * *".¹³ It seems clear that the California Alien Land Law is invalid by virtue of this treaty provision, for State laws must be consistent with, and in conformity to, the treaties of the United States. Constitution, Article 6.¹⁴ Certainly a person's right to the use and ownership of land along with the rest of the inhabitants of a country is a part of "human rights and fundamental freedoms", and the observance of such rights and freedoms "without distinction as to race" is not "promoted" by prohibitions applicable to a racial group. Not only does the prohibition itself encourage, rather than eradicate, racial distinctions, but it is a more serious violation of the Charter provision when its repercussions upon the standing of the race in the community and upon the economic well-being of the group are contemplated. Particularly in view of the forcible expulsion of persons of the Japanese race from California (and other west coast states) as a war measure, this Court's countenancing of war-time racial discriminations in the *Hirabayashi* and *Korematsu* cases, and the current

13. Article 55c, United Nations-Charter, ratified by the United States August 8, 1945, United States Treaty Series (State Dept., 1946), No. 993; Article 56 states: "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

14. And see *United States v. Pink*, 315 U. S. 203; *Missouri v. Holland*, 252 U. S. 416.

It is to be noted that the Charter provision has been given effect by the Supreme Court of Ontario in a decision invalidating a covenant prohibiting the sale of property to Jews. *In Matter of Drummond Wreck*, Ontario Reports, 1945, p. 778.

attempts of the evacuees to regain their positions in the California community, is it the more imperative to hold the Alien Land Law a gross deterrent to the promotion of "human rights and fundamental freedoms for all without distinction as to race".

CONCLUSION

It is respectfully submitted that the decision of the California Supreme Court be overruled and the California Alien Land Law here involved be declared unconstitutional.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae.

MORRIS GRUPP,
of the California bar,

EDWIN BORCHARD,
of the Connecticut bar,

REUBEN OPPENHEIMER,
of the Maryland bar,

ZEPHARIAH CHAFEE, JR.,
of the Massachusetts bar,

NANETTE DEMBITZ,
EDWARD J. ENNIS,
OSMOND K. FRAENKEL,
WALTER GELLHORN,
ARTHUR GARFIELD HAYS,
of the New York bar,

NELS PETERSON,
of the Oregon bar,

HAROLD EVANS,
of the Pennsylvania bar,

BENJAMIN KIZER,
of the Washington bar.

P.2
Jackson

SUPREME COURT OF THE UNITED STATES

No. 44.—OCTOBER TERM, 1947.

Fred Y. Oyama and Kajiro Oyama,
individually and as guardian of
Fred Y. Oyama, Petitioners, v.
State of California.

On Writ of Certiorari
to the Supreme
Court of Califor-
nia.

[January 19, 1948.]

MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

Petitioners challenge the constitutionality of California's Alien Land Law¹ as it has been applied in this case to effect an escheat of two small parcels of agricultural land.² One of the petitioners is Fred Oyama, a minor American citizen in whose name title was taken. The other is his father and guardian, Kajiro Oyama, a Japanese citizen not eligible for naturalization,³ who paid the purchase price.

Petitioners press three attacks on the Alien Land Law as it has been applied in this case: first, that it deprives Fred Oyama of the equal protection of the laws and of his privileges as an American citizen; secondly, that it denies Kajiro Oyama equal protection of the laws; and, thirdly, that it contravenes the due process clause by

¹ Cal. Gen. Laws Act 261 (Deering 1944, 1945 Supp.).

² 29 Cal. 2d 164, 173 P. 2d 794 (1946).

³ At the time the Alien Land Law was adopted the right to be naturalized extended only to free white persons and persons of African nativity or descent. In 1940, descendants of races indigenous to the Western Hemisphere were also made eligible, 54 Stat. 1140; in 1943 Chinese were made eligible, 57 Stat. 601; and in 1946 Filipinos and persons of races indigenous to India were made eligible, 60 Stat. 416, 8 U. S. C. A. § 703 (1946 Supp.). While it is not altogether clear whether the statute should be interpreted to include or to exclude certain peoples, see Note, 54 Marq. L. Rev. 860, 864-5 (1941), it seems to be accepted that Japanese are among the few groups not eligible for citizenship.

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sanctioning a taking of property after expiration of the applicable limitations period. Proper foundation for these claims has been laid in the proceedings below.

In approaching cases, such as this one, in which federal constitutional rights are asserted, it is incumbent on us to inquire not merely whether those rights have been denied in express terms, but also whether they have been denied in substance and effect. We must review independently both the legal issues and those factual matters with which they are commingled.⁴

In broad outline, the Alien Land Law forbids aliens ineligible for American citizenship to acquire, own, occupy, lease, or transfer agricultural land.⁵ It also provides that any property acquired in violation of the statute shall escheat as of the date of acquisition⁶ and that the same result shall follow any transfer made with "intent to prevent, evade or avoid" escheat.⁷ In addition, that intent is presumed, *prima facie*, whenever an ineligible alien pays the consideration for a transfer to a citizen or eligible alien.⁸

The first of the two parcels in question, consisting of six acres of agricultural land in southern California, was purchased in 1934, when Fred Oyama was six years old. Kajiro Oyama paid the \$4,000 consideration, and the seller executed a deed to Fred. The deed was duly recorded.

Some six months later, the father petitioned the Superior Court for San Diego County to be appointed Fred's guardian, stating that Fred owned the six acres. After a hearing, the court found the allegations of the petition true and Kajiro Oyama "a competent and proper person"

us 463 * See *Patton v. Mississippi*, ante p. Chambers v. Florida, 309 U. S. 227, 228-9, (1940); *Norris v. Alabama*, 294 U. S. 587, 590 (1935).

⁵ §§ 1 and 2.

⁶ § 7.

⁷ § 9.

⁸ § 9 (a).

to be appointed Fred's guardian. The appointment was then ordered, and the father posted the necessary bond.

In 1936 and again in 1937, the father as guardian sought permission to borrow \$4,000, payable in six months, for the purpose of financing the next season's crops and to mortgage the six-acre parcel as security. In each case notice of the petition and date for hearing was published in a newspaper, the court then approved the borrowing as advantageous to Fred Oyama's estate, and the father posted a bond for \$8,000. So far as appears from the record, both loans were obtained, used for the benefit of the estate, and repaid on maturity.

The second parcel, an adjoining two acres, was acquired in 1937, when Fred was nine years old. It was sold by the guardian of another minor, and the court supervising that guardianship confirmed the sale "to Fred Oyama" as highest bidder at a publicly advertised sale. A copy of the court's order was recorded. Fred's father again paid the purchase price, \$1,500.

From the time of the two transfers until the date of trial, however, Kajiro Oyama did not file the annual reports which the Alien Land Law requires of all guardians of agricultural land belonging to minor children of ineligible aliens.*

In 1942, Fred and his family were evacuated from the Pacific Coast along with all other persons of Japanese descent. And in 1944, when Fred was sixteen and still forbidden to return home, the State filed a petition to declare an escheat of the two parcels on the ground that the conveyances in 1934 and 1937 had been with intent to violate and evade the Alien Land Law.

At the trial the only witness, other than a court official testifying to records showing the facts set forth above,

* §§ 4 and 5. This was the holding of the state courts. Petitioners argue that until 1943 there was some doubt as to whether reports were required. See note 23, *infra*.

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was one John Kurfurst, who had been left in charge of the land at the time of the evacuation. He testified that the Oyama family once lived on the land but had not occupied it for several years before the evacuation. After the evacuation, Kurfurst and those to whom he rented the property drew checks to Fred Oyama for the rentals (less expenses), and Kurfurst transmitted them to Fred Oyama through the War Relocation Authority. The canceled checks were returned endorsed "Fred Oyama," and no evidence was offered to prove that the signatures were not by the son. Moreover, the receipts issued by the War Relocation Authority for the funds transmitted by Kurfurst were for the account of Fred Oyama, and Kurfurst identified a letter signed "Fred Oyama" directing him to turn the property over to a local bank for management.

On direct examination by the State's Attorney, however, Kurfurst also testified that he knew the father as "Fred," but he added that he had never heard the father refer to himself by that name. In addition, he testified on cross-examination that he had once heard the father say, "Some day the boy will have a good piece of property because that is going to be valuable." He also admitted that he knew "the father was running the boy's business" and that "the property belonged to the boy and to June Kushino" (Fred's cousin, an American citizen). Kurfurst further acknowledged that in a letter he had written about the property and had headed "Re: Fred Yoshihiro Oyama and June Kushino" he meant by "Fred Yoshihiro Oyama" the boy, not the father. He also understood a letter written to him by the War Relocation Authority "Re: Fred Oyama" to refer to the boy.

From this evidence the trial court found as facts that the father had had the beneficial use of the land and that the transfers were subterfuges effected with intent to prevent, evade or avoid escheat. Accordingly, the court

entered its conclusion of law that the parcels had vested in the State as of the date of the attempted transfers in 1934 and 1937.

The trial court filed no written opinion but indicated orally that its findings were based primarily on four inferences: (1) the statutory presumption that any conveyance is with "intent to prevent, evade or avoid" escheat if an ineligible alien pays the consideration;¹⁰ (2) an inference of similar intent from the mere fact that the conveyances ran to a minor child;¹¹ (3) an inference of lack of bona fides at the time of the original transactions from the fact that the father thereafter failed to file annual guardianship reports; and (4) an inference from the father's failure to testify that his testimony would have been adverse to his son's cause. No countervailing inference was warranted by the exhibits in Fred's name, the judge said, "because there are many instances where there is little in a name."

In holding the trial court's findings of intent fully justified by the evidence, the Supreme Court of California pointed to the same four inferences. It also ruled that California could constitutionally exclude ineligible aliens from any interest in agricultural land,¹² and that Fred Oyama was deprived of no constitutional guarantees since the land had passed to the State without ever vesting in him.

¹⁰ § 9 (a) of the Alien Land Law.

¹¹ The judge stated that in the absence of a strong reason people just do not take title to real estate in the name of their seven-year old children—thereby putting it beyond the power of the parents to deal with it directly, to deed it away, to borrow money on it and to make free disposition of it.

¹² This conclusion was based in large measure on a series of cases decided within a week of each other in 1923: *Terrate v. Thompson*, 263 U. S. 197; *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313; and *Frick v. Webb*, 263 U. S. 326.

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We agree with petitioners' first contention, that the Alien Land Law, as applied in this case, deprives Fred Oyama of the equal protection of California's laws and of his privileges as an American citizen. In our view of the case, the State has discriminated against Fred Oyama; the discrimination is based solely on his parents' country of origin; and there is absent the compelling justification which would be needed to sustain discrimination of that nature.

By federal statute, enacted before the Fourteenth Amendment but vindicated by it, the states must accord to all citizens the right to take and hold real property.¹³ California, of course, recognizes both this right and the fact that infancy does not incapacitate a minor from holding realty.¹⁴ It is also established under California law that ineligible aliens may arrange gifts of agricultural land to their citizen children.¹⁵ Likewise, when a minor citizen does become the owner of agricultural land, by gift or otherwise, his father may be appointed guardian of the estate, whether the father be a citizen, an eligible alien, or an ineligible alien.¹⁶ And, once appointed, a guardian is

¹³ "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." R. S. § 1978, 8 U. S. C. § 42.

¹⁴ The State in its brief concedes that this is so. See also *Estate of Yano*, 188 Cal. 645, 649, 206 Pac. 995, 998 (1922); *People v. Fujita*, 215 Cal. 166, 169, 8 P. 2d 1011, 1012 (1932).

¹⁵ The State also concedes the accuracy of this proposition. See also *People v. Fujita*, *supra* note 14.

¹⁶ A statute of general applicability requires that parents be given preference in the appointment of a minor's guardian. Cal. Prob. Code Ann. § 1407.

Section 4 of the Alien Land Law, as enacted in 1920, prohibited an ineligible alien from becoming the guardian of that part of his child's estate which consisted of agricultural land. Cal. Stats. 1921, p. 83. This section was held unconstitutional in *Estate of Yano*, *supra* note 14.

entitled to have custody of the estate and to manage and husband it for the ward's benefit.¹⁷ To that extent Fred Oyama is ostensibly on a par with minors of different lineage.

At this point, however, the road forks. The California law points in one direction for minor citizens like Fred Oyama, whose parents cannot be naturalized, and in another for all other children—for minor citizens whose parents are either citizens or eligible aliens, and even for minors who are themselves aliens though eligible for naturalization.

In the first place, for most minors California has the customary rule that where a parent pays for a conveyance to his child there is a presumption that a gift is intended; there is no presumption of a resulting trust, no presumption that the minor takes the land for the benefit of his parent.¹⁸ When a gift is thus presumed and the deed is recorded in the child's name, the recording suffices for delivery,¹⁹ and, absent evidence that the gift is disadvantageous, acceptance is also presumed.²⁰ Thus the burden of proving that there was in fact no completed bona fide gift falls to him who would attack its validity.

Fred Oyama, on the other hand, faced at the outset the necessity of overcoming a statutory presumption that conveyances financed by his father and recorded in Fred's

¹⁷ See *DeGreayer v. Superior Court*, 117 Cal. 640, 49 Pac. 983 (1897).

¹⁸ *Gomez v. Cecina*, 15 Cal. 2d 363, 101 P. 2d 477 (1940); *Quinn v. Reilly*, 198 Cal. 465, 245 Pac. 1091 (1926); *Russ v. Mebius*, 16 Cal. 350 (1860); cf. *Lezinsky v. Mason Malt Whiskey Distilling Co.*, 185 Cal. 240, 250, 196 Pac. 884, 889 (1921); *Hamilton v. Hubbard*, 134 Cal. 603, 605, 65 Pac. 321, 322 (1901).

¹⁹ *People v. Fujita*, 215 Cal. 166, 169, 8 P. 2d 1011, 1012 (1932); *Estate of Yano*, 188 Cal. 645, 649, 206 Pac. 995, 998 (1922); cf. *Turner v. Turner*, 173 Cal. 782, 786, 161 Pac. 980, 982 (1916).

²⁰ *People v. Fujita* and *Estate of Yano*, both *supra* note 19; *DeLevitan v. Evans*, 39 Cal. 120, 123 (1870).

name were not gifts at all. Something very akin to a resulting trust was presumed and, at least *prima facie*, Fred was presumed to hold title for the benefit of his parent.²¹

In the second place, when it came to rebutting this statutory presumption, Fred Oyama ran into other obstacles which, so far as we can ascertain, do not beset the path of most minor donees in California.

Thus the California courts said that the very fact that the transfer put the land beyond the father's power to deal with it directly—to deed it away, to borrow money on it, and to make free disposition of it in any other way—showed that the transfer was not complete, that it was merely colorable. The fact that the father attached no strings to the transfer was taken to indicate that he meant, in effect, to acquire the beneficial ownership himself. The California law purports to permit citizen sons to take gifts of agricultural land from their fathers, regardless of the fathers' nationality. Yet, as indicated by this case, if the father is ineligible for citizenship, facts which would usually be considered indicia of the son's ownership are used to make that ownership suspect; if the father is not an ineligible alien, however, the same facts would be evidence that a completed gift was intended.

Furthermore, Fred Oyama had to counter evidence that his father was remiss in his duties as guardian. Acts subsequent to a transfer may, of course, be relevant to indicate a transferor's intent at the time of the transfer. In this case the trial court itself had reservations as to

²¹ It is interesting to note that in two previous cases the California Supreme Court has explicitly stated that where aliens are prohibited from holding lands, an implied trust by operation of law will not arise in their favor. *Estate of Yano* and *People v. Fujita*, both *supra*, note 19. Both cases were decided before purchase of either of the parcels involved in this case and at the time of the purchase apparently represented the established State law.

the evidentiary value of the father's omissions;²² with these we agree, especially because there was some reason to believe reports were not required of him until 1943,²³ and he had been excluded from the state from 1942 on. More important to the issue of equal protection, however, our attention has been called to no other case in which the penalty for a guardian's derelictions has fallen on any one but the guardian. At any time the court supervising the guardianship could have demanded the annual accounts and, if appropriate, could have removed Kajiro Oyama as guardian; severe punishment could also have been meted out.²⁴ The whole theory of

²² While relying to some extent on this inference the trial court indicated that it did not consider it a strong one "because sometimes people who are not informed as to the requirements of the law in connection with those matters simply fail to do the thing that the law requires."

²³ Section 4 of the Alien Land Law, as amended in 1920, prohibited ineligible aliens from becoming guardians of agricultural land owned by their minor children, Cal. Stats. 1921, p. 83, while § 5 required certain reports of persons who could and did become guardians of such land—i. e., persons other than the parents. Section 4 was held invalid in 1922 in *Estate of Yano*, *supra* note 21, and was not replaced until 1943, when there was enacted a new § 4 enunciating requirements for ineligible alien guardians. Section 5 has remained on the books continuously.

Petitioners argue that there may have been at least a justifiable belief on the part of ineligible aliens such as Kajiro Oyama that they were not required to file guardianship reports until 1943. As inferential corroboration of this view, they point to the failure of both the guardianship court and the district attorney to take action against Kajiro Oyama under § 5 between 1935 and 1943.

²⁴ If, as the State contends, § 5 of the Act required Kajiro Oyama to file annual reports, the same section set as the penalty for violation a fine up to \$1,000 and imprisonment up to a year. Other statutes of general applicability subject guardians to the law of trusts and authorize the court to remove a guardian for mismanagement or failure to render accounts. Cal. Prob. Code §§ 1400, 1580. Furthermore, since 1943 the statute has provided that breach of § 4 may subject the guardian to a maximum of 10 years' imprisonment and a \$5,000 fine.

guardianships is to protect the ward during his period of incapacity to protect himself. In Fred Oyama's case, however, the father's deeds were visited on the son; the ward became the guarantor of his guardian's conduct.

The cumulative effect, we believe, was clearly to discriminate against Fred Oyama. He was saddled with an onerous burden of proof which need not be borne by California children generally. The statutory presumption and the two ancillary inferences, which would not be used against most children, were given such probative value as to prevail in the face of a deed entered in the public records, four court orders recognizing Fred Oyama as the owner of the land, several newspaper notices to the same effect, and testimony that business transactions regarding the land were generally understood to be on his behalf. In short, Fred Oyama lost his gift, irretrievably and without compensation, solely because of the extraordinary obstacles which the State set before him.

The only basis for this discrimination against an American citizen, moreover, was the fact that his father was Japanese and not American, Russian, Chinese, or English. But for that fact alone, Fred Oyama, now a little over a year from majority, would be the undisputed owner of the eight acres in question.

The State argues that racial descent is not the basis for whatever discrimination has taken place. The argument is that the same statutory presumption of fraud would apply alike to any person taking agricultural land paid for by Kajiro Oyama, whether the recipient was Fred Oyama or a stranger of entirely different ancestry. We do not know how realistic it is to suppose that Kajiro Oyama would attempt gifts of land to others than his close relatives. But in any event, the State's argument ignores the fact that the generally applicable California law treats conveyances to the transferor's children differ-

ently from conveyances to strangers. Whenever a Chinese or English parent, to take an example, pays a third party to deed land to a stranger, a resulting trust is presumed to arise, and the stranger is presumed to hold the land for the benefit of the person paying the consideration;²⁵ when the Alien Land Law applies a similar presumption to a like transfer by Kajiro Oyama to a stranger, it appears merely to reiterate the generally applicable law of resulting trusts. When, on the other hand, the same Chinese or English father uses his own funds to buy land in his citizen son's name, an indefeasible title is presumed to vest in the boy;²⁶ but when Kajiro Oyama arranges a similar transfer to Fred Oyama, the Alien Land Law interposes a presumption just to the contrary. Thus, as between the citizen children of a Chinese or English father and the citizen children of a Japanese father, there is discrimination; as between strangers taking from the same transferors, there appears to be none.

It is for this reason that *Cockrill v. California*, 268 U. S. 258 (1925), does not support the State's position. In that case an ineligible alien paid for land and had title put in a stranger's name, and this Court affirmed a decision upholding the statutory presumption of the Alien Land Law as there applied.²⁷

²⁵ Cal. Civil Code § 853.

²⁶ See note 18 *supra*.

²⁷ In the *Cockrill* case the ineligible alien, one Ikada, first attempted to purchase the land in his own name. When the seller questioned the legality of the transfer, it was arranged for title to be put in the name of Cockrill, Ikada's attorney. That was done, and immediately on execution of the contract of sale, Ikada himself entered into possession. There was some evidence that the land was purchased and was being held for Ikada's American-born children, but a jury found Ikada and Cockrill guilty of conspiracy to violate the Alien Land Law. In affirming, the California appellate court pointed out that no move had been made toward having a guardian appointed for the children. 62 Cal. App. 22, 45, 216 Pac. 78, 88. Before this Court

There remains the question of whether discrimination between citizens on the basis of their racial descent, as revealed in this case, is justifiable. Here we start with the proposition that only the most exceptional circumstances can excuse discrimination on that basis in the face of the equal protection clause and a federal statute giving all citizens the right to own land.²⁵ In *Hirabayashi v. United States*, this Court sustained a war measure which involved restrictions against citizens of Japanese descent. The Court recognized that, as a general rule, "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." 320 U. S. 81, 100 (1943).

The only justification urged upon us by the State is that the discrimination is necessary to prevent evasion of the Alien Land Law's prohibition against the ownership of agricultural land by ineligible aliens. This reasoning presupposes the validity of that prohibition, a premise which we deem it unnecessary and therefore inappropriate to reexamine in this case. But assuming, for purposes of argument only, that the basic prohibition is constitutional, it does not follow that there is no constitutional limit to the means which may be used to enforce it. In the light most favorable to the State, this case presents a conflict between the State's right to formulate a policy of landholding within its bounds and the right of

Ikada and Cockrill argued that the statutory presumption denied equal protection to the Japanese, not to the donee as in the present case.

Since we do not reach petitioners' second argument, that it is unconstitutional for a state to forbid the ownership of land by an ineligible alien, we do not think it appropriate to reexamine either the cases cited in note 12, *supra*, or the necessary implication in the *Cockrill* case that the basic prohibition of the Alien Land Law is valid.

²⁵ See note 13 *supra*.

American citizens to own land anywhere in the United States. When these two rights clash, the rights of a citizen may not be subordinated merely because of his father's country of origin.

Since the view we take of petitioners' first contention requires reversal of the decision below, we do not reach their other contentions: that the Alien Land Law denies ineligible aliens the equal protection of the laws, and that failure to apply any limitations period to escheat actions under that law takes property without due process of law.

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 44.—OCTOBER TERM, 1947.

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individually and as guardian of
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v.
State of California.

On Writ of Certiorari
to the Supreme
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nia.

[January 19, 1948.]

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS agrees, concurring.

I concur in the Court's judgment and its opinion. But I should prefer to reverse the judgment on the broader grounds that the basic provisions of the California Alien Land Law violate the equal protection clause of the Fourteenth Amendment and conflict with federal laws and treaties governing the immigration of aliens and their rights after arrival in this country. The California law in actual effect singles out aliens of Japanese ancestry, requires the escheat of any real estate they own, and its language is broad enough to make it a criminal offense, punishable by imprisonment up to ten years, for them to acquire, enjoy, use, possess, cultivate, occupy, or transfer real property.¹ It would therefore appear to be a crime for an alien of Japanese ancestry to own a home in Cali-

¹ Section 10 (a) of the Alien Property Initiative Act provides: "Any person who violates any of the provisions of this act shall be punishable by imprisonment in the county jail not to exceed one year or in the State penitentiary not exceeding 10 years, or by a fine not to exceed five thousand dollars (\$5,000) or both." Section 2 of the Act provides that aliens ineligible for citizenship "may acquire, possess, enjoy, use, cultivate, occupy and transfer real property, or any interest therein" in California only to the extent allowed by treaty between the United States and the nation of which the alien is a citizen.

fornia, at least if the land around it is suitable for cultivation.² This is true although the statute does not name the Japanese as such, and although its terms also apply to a comparatively small number of aliens from other countries. That the effect and purpose of the law is to discriminate against Japanese because they are Japanese is too plain to call for more than a statement of that well-known fact.

We are told, however, that, despite the sweeping prohibition against Japanese ownership or occupancy, it is no violation of the law for a Japanese to work on land as a hired hand for American citizens or for foreign nationals permitted to own California lands. And a Japanese man or woman may also use or occupy land if acting only in the capacity of a servant. In other words, by this Alien Land Law California puts all Japanese aliens within its boundaries on the lowest possible economic level. And this Land Law has been followed by another which now bars Japanese from the fishing industry. Cal. Stats. 1945, c. 181; see *Takahashi v. Fish and Game Commission*, — Cal. —. If there is any one purpose of the Fourteenth Amendment that is wholly outside the realm of doubt, it is that the Amendment was designed to bar States from denying to some groups, on account of their race or color, any rights, privileges, and opportunities accorded to other groups. I would now overrule the previous decisions of this Court that sustained state land laws which discrim-

² The United States-Japanese Treaty of 1911, which guaranteed Japanese in this country the right to own and lease land "for residential and commercial purposes," 37 Stat. 1504, was abrogated effective January 26, 1940. Dept. of State Bull., July 29, 1939, p. 81. Since the abrogation of this treaty, it is doubtful whether Japanese aliens in California may own or rent a home or a business. We are told that a recent intermediate court decision upholding the right of Japanese aliens to rent a building for business purposes, *Palermo v. Stockton Theatres*, — Cal. App. —, 172 P. 2d 103 (1946), has been appealed to the Supreme Court of California.

inate against people of Japanese origin residing in this country.³

Congress has provided strict immigration tests and quotas. It has also enacted laws to regulate aliens after admission into the country. Other statutes provide for deportation of aliens. Although Japanese are not permitted to become citizens by the ordinary process of naturalization, still Congress permitted the admission of some Japanese into this country. All of this means that Congress, in the exercise of its exclusive power over immigration, *Truax v. Raich*, 239 U. S. 33, 42, decided that certain Japanese, subject to federal laws, might come to and live in any one of the States of the Union. The Supreme Court of California has said that one purpose of that State's Land Law is to "discourage the coming of Japanese into this State . . ." *Estate of Yano*, 188 Cal. 645, 658. California should not be permitted to erect obstacles designed to prevent the immigration of people whom Congress has authorized to come into and remain in the country. See *Hines v. Davidowitz*, 312 U. S. 52, 68. There are additional reasons now why that law stands as an obstacle to the free accomplishment of our policy in the international field. One of these reasons is that we have recently pledged ourselves to cooperate with the United Nations to "promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."⁴ How can this nation be faithful to this international pledge if state laws which bar land ownership and occupancy by aliens on account of race are permitted to be enforced?

³ *Terrace v. Thompson*, 263 U. S. 197; *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313; *Frick v. Webb*, 263 U. S. 326.

⁴ United Nations Charter, Articles 55c and 56; 59 Stat. 1046 (1945).

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[January 19, 1948.]

MR. JUSTICE MURPHY, with whom MR. JUSTICE RUTLEDGE joins, concurring.

To me the controlling issue in this case is whether the California Alien Land Law on its face is consistent with the Constitution of the United States. Can a state prohibit all aliens ineligible for American citizenship from acquiring, owning, occupying, enjoying, leasing or transferring agricultural land? Does such a prohibition square with the language of the Fourteenth Amendment that no state shall "deny to any person within its jurisdiction the equal protection of the laws"?

The negative answer to those queries is dictated by the uncompromising opposition of the Constitution to racism, whatever cloak or disguise it may assume. The California statute in question, as I view it, is nothing more than an outright racial discrimination. As such, it deserves constitutional condemnation. And since the very core of the statute is so defective, I consider it necessary to give voice to that fact even though I join in the opinion of the Court.

In its argument before us, California has disclaimed any implication that the Alien Land Law is racist in its origin, purpose or effect. Reference is made to the fact that nowhere in the statute is there a single mention of race, color, creed or place of birth or allegiance as a determinant of who may not own or hold farm land. The discrimination established by the statute is said to

be entirely innocent of the use of such factors; being grounded solely upon the reasonable distinctions created by Congress in its naturalization laws. However, an examination of the circumstances surrounding the original enactment of this law in 1913, its reenactment in 1920 and its subsequent application reveals quite a different story.¹

The California Alien Land Law was spawned of the great anti-Oriental virus which, at an early date, infected many persons in that state. The history of this anti-Oriental agitation is not one that does credit to a nation that prides itself, at least historically, on being the friendly haven of the tired and the oppressed of other lands. Beginning in 1850, with the arrival of substantial numbers of Chinese immigrants, racial prejudices and discriminations began to mount. Much of the opposition to these Chinese came from trade unionists, who feared economic competition, and from politicians, who sought union support. Other groups also shared in this opposition. Various laws and ordinances were enacted for the purpose of discouraging the immigrants and dramatizing the native dissatisfaction. Individual Chinese were sub-

¹ The story is a familiar one and has been told many times. See the following sources:

Treatises.—Millis, *The Japanese Problem in the United States* (1915); Ichihashi, *Japanese in the United States* (1932); Strong, *The Second Generation Japanese Problem* (1934); McWilliams, *Prejudice* (1944); Konvitz, *The Alien and the Asiatic in American Law* (1946), ch. 5.

Articles.—Buell, "The Development of Anti-Japanese Agitation in the United States," 37 Pol. Sci. Q. 605, 38 id. 57; Bailey, "California, Japan, and the Alien Land Legislation of 1913," 1 Pac. Hist. Rev. 36; McGovney, "The Anti-Japanese Land Laws of California and Ten Other States," 35 Calif. L. Rev. 7; Ferguson, "The California Alien Land Law and the Fourteenth Amendment," 35 Calif. L. Rev. 61; Comment, 56 Yale L. J. 1017.

Government Publications.—H. R. Rep. No. 2124, 77th Cong., 2d Sess.; U. S. Dept. of Interior, W. R. A., *People in Motion: The Post-war Adjustment of the Evacuated Japanese Americans* (1947).

jected to many acts of violence. Eventually Congress responded to this popular agitation and adopted Chinese exclusion laws.

It was not until 1900 that Japanese began to arrive in California in large numbers. By that time the repressive measures directed at the Chinese had achieved much of their desired effect; the Chinese population had materially decreased and the antipathy of the Americans was on the decline. But the arrival of the Japanese fanned anew the flames of anti-Oriental prejudice. History then began to repeat itself. White workers resented the new influx, a resentment which readily lent itself to political exploitation. Demands were made that Japanese immigration be limited or prohibited entirely.² Numerous acts of violence were perpetrated against Japanese busi-

² "In November of 1904 the American Federation of Labor, in annual convention in San Francisco, resolved to exclude Japanese and Korean, as well as Chinese laborers. The San Francisco Chronicle in February 1905 began the publication of a series of articles captioned: 'Crime and Poverty Go Hand in Hand with Asiatic Labor,' 'Brown Men an Evil in the Public Schools,' 'Japanese a Menace to American Women,' 'Japs Throttle Progress in the Rich Fruit Section.' The campaign was immediately effective. In early March the California Legislature, followed by the Nevada Legislature, passed a resolution demanding immediate action to limit the immigration of Japanese laborers. And in May 1905 the Asiatic Exclusion League, originally the Japanese and Korean Exclusion League, was organized in San Francisco . . .

"The avowed purpose of the league was to preserve North America for Americans, by preventing or minimizing the immigration of Asiatics, who were said to be unassimilable, and ill-suited to complement the machine processes of American industrial life. The league declared itself in favor of segregation of Japanese in the schools and a boycott against Japanese workers and businessmen. In California alone, it was claimed that membership of the league was 110,000 in February of 1908. Of the 238 affiliated bodies composing the league, 202 were labor unions; the rest were fraternal, civic, benevolent, political, and military societies." H. R. Rep. No. 2124, 77th Cong., 2d Sess., pp. 72-73.

nessmen and workers, combined with private economic sanctions designed to drive them out of business. Charges of espionage, unassimilativeness, clannishness and corruption of young children were made against these "Mongolian invaders." Campaigns were organized to secure segregated schools and to preserve "America for the Americans."

Indeed, so loud did this anti-Japanese clamor become that the Japanese Government made formal protests to the United States. President Theodore Roosevelt thereupon investigated and intervened in the California situation. He was able to secure a slight amelioration. Further negotiations with the Japanese Government resulted in a so-called "gentlemen's agreement," whereby the Japanese Government agreed to limit passports to the United States to nonlaborers and to others who had already established certain business and personal interests in this country.³

But the agitation did not die and anti-Japanese measures continued to be proposed in wholesale fashion. The first anti-Japanese land bills were introduced in the California legislature in 1907, but the combined efforts of President Roosevelt and Governor Gillett prevented their passage. At least seventeen anti-Japanese bills were introduced in the 1909 session, including another land bill. President Roosevelt again intervened. This time he succeeded in having the land bill amended to apply to all aliens, as a result of which the bill was defeated; ⁴ he was also instrumental in preventing the

³ See Ichibashi, Japanese in the United States (1932), ch. XVI.

⁴ During the legislative debate on this bill, one of the assemblymen stated: "I would rather every foot of California was in its native wilderness than to be cursed by the foot of these yellow invaders, who are a curse to the country, a menace to our institutions, and destructive of every principle of Americanism. I want no aliens, white, red, black or yellow, to own a foot of land in the State of California."

passage of a school segregation bill. The flood of anti-Japanese proposals continued in the 1911 session, at which more than twenty such measures were introduced. Among them, of course, was still another alien land bill. It provided that "no alien who is not eligible to citizenship" should hold real property in California. The prospects for the passage of this bill seemed good, for by this time all political parties in the state had anti-Japanese planks in their platforms. But Presidential intervention was once again successful and the bill died in committee.⁵

In 1913, however, nothing could stop the passage of the original version of what is now the Alien Land Law.⁶ This measure, though limited to agricultural lands, represented the first official act of discrimination aimed at the Japanese. Many Japanese were engaged in agricultural pursuits in 1913 and they constituted a substantial segment of the California farm labor supply. From 1900 to 1910, Japanese-controlled farms in California had in-

Another assemblyman said that he intensely and unalterably hated the Japanese, whom he characterized as "a bandy-legged bagaboo, miserable craven Simian, degenerated rotten little devil." From the San Francisco Chronicle, February 3, 1909, quoted in Ichihashi, Japanese in the United States (1932), p. 262.

⁵ Also opposing the bill at this time was the Panama Pacific Exposition Company and its supporters. They desired not to antagonize Japan and thus jeopardize the chances of Japan's participation in the exposition, which was soon to be held at San Francisco.

⁶ "By 1913 the political situation was ripe for the passage of an anti-Japanese land law. The state administration in California remained Progressive Republican while the national administration became Democratic and exercised less influence over the state legislature. The Exposition had progressed to the point where the appeal for its success was no longer sufficiently effective. Opposition to the bill came only from a few relatively ineffective groups." Ferguson, "The California Alien Land Law and the Fourteenth Amendment," 35 Calif. L. Rev. 61, 66.

creased from 4,698 acres to 99,254 acres. The agricultural situation thus offered a fruitful target for the anti-Japanese forces, who had been balked in their attempts to secure a ban on all Japanese immigration and to outlaw Japanese acquisition and enjoyment of residential and commercial property. In this new endeavor they were eminently successful. Secretary of State Bryan, acting on behalf of President Wilson, made a personal appearance in California to plead for caution, but his request was ignored as the legislators voted overwhelmingly in favor of the bill. This 1913 law denied "aliens ineligible to citizenship" the privilege of buying land for agricultural purposes in California, and allowed them to lease land for such purposes for no more than three years. The measure was so drawn as not to be inconsistent with the Japanese-American treaty of 1911, which authorized Japanese in this country to lease and occupy land for residential and commercial purposes. But since the treaty made no mention of agricultural land, legislation on the matter by California did not present a square conflict.

The passage of the law was an international incident. The Japanese Government made an immediate protest on the ground that the statute was an indication of unfriendliness towards its people. Indeed, the resentment was so violent inside Japan that demands were made that war be declared against the United States. Anti-American agitation grew rapidly.⁷ The question

⁷ "The land act could not have been passed at a more inopportune time. Shortly prior to its adoption, this country had aroused considerable resentment in Japan by its recognition of the newly established Chinese Republic Furthermore the land act was passed, as Mr. A. M. Pooley has pointed out, 'shortly after the Tokio mob had succeeded in shattering the third Katsura Ministry.' Passage of the bill occasioned violent resentment in Japan. 'Revelling in the recent discovery of its power,' writes Mr. Pooley, 'the mob, inflamed by the opposition, endeavored to use the same methods to force a

was discussed at length on the diplomatic level. It was declared by the Japanese Minister of Foreign Affairs that the statute "is essentially unfair and invidiously discriminatory against my countrymen, and inconsistent as well with the sentiments of amity and good neighborhood which have presided over the relations between the two countries" But the matter was allowed to lapse as both countries became increasingly occupied with the developments of World War I.

The intention of those responsible for the 1913 law was plain. The "Japanese menace" was to be dealt with on a racial basis. The immediate purpose, of course, was to restrict Japanese farm competition. As subsequently stated by Governor Stephens of California, "In 1913 the legislature of this state passed a statute forbidding the ownership of agricultural lands by Japanese and limiting their tenure to three year leaseholds. It was the hope at that time that this statute might put a stop to the encroachments of the Japanese agriculturist."¹ Actu-

settlement of the California question on the government that it had used in ousting the Katsura Ministry. Throughout April and May, 1913, the Japanese press adopted a most threatening and truculent tone. California newspapers on April 18, 1913, carried a dispatch from Tokyo to the effect that 'a demand that Japan resort to arms was hysterically cheered at a mass meeting here tonight to protest against the alien land bill now pending before the California legislature. Twenty thousand persons assembled.'

"More unfortunate still," observed Mr. Pooley, "the wave of excitement grew under the stimulus of anti-American societies formed by men in responsible positions. The agitation of April and May, 1913, became a national movement and of such volume that the Government had to pay respect to it. The anti-American movement spread, associations sprang up like mushrooms to deal with the 'matter.'" McWilliams, *Prejudice* (1944), p. 46.

¹ Quoted in Ichihashi, *Japanese in the United States* (1932), p. 274.

* Report of California State Board of Control, California and the Oriental (1920), p. 11.

ally, however, the law had little effect on the farm situation. It failed to prohibit the acquisition of farms in the future or to divest any existing holdings; and there was no limitation on the renewal of leases. The Japanese farm population remained largely intact.

The more basic purpose of the statute was to irritate the Japanese, to make economic life in California as uncomfortable and unprofitable for them as legally possible. It was thus but a step in the long campaign to discourage the Japanese from entering California and to drive out those who were already there. The Supreme Court of California admitted as much in its statement that the Alien Land Law was framed so as "to discourage the coming of Japanese into this state." *Estate of Tetsubumi Yano*, 188 Cal. 645, 658, 206 P. 995, 1001. Even more candid was the declaration in 1913 by Ulysses S. Webb, one of the authors of the law and an Attorney General of California. He stated: "The fundamental basis of all legislation upon this subject, State and Federal, has been, and is, race undesirability. It is unimportant and foreign to the question under discussion whether a particular race is inferior. The simple and single question is, is the race desirable It [the Alien Land Law] seeks to limit their presence by curtailing their privileges which they may enjoy here; for they will not come in large numbers and long abide with us if they may not acquire land. And it seeks to limit the numbers who will come by limiting the opportunities for their activity here when they arrive."¹⁰

¹⁰ From a speech before the Commonwealth Club of San Francisco on August 9, 1913, quoted in Ichihashi, Japanese in the United States (1932), p. 275.

"Apparently one factor which, in Mr. Webb's mind, made the Japanese an "undesirable" race was their efficiency in agricultural production. In a brief signed by him and submitted to this Court in

Further evidence of the racial prejudice underlying the Alien Land Law is to be found in the events relating to the reenactment and strengthening of the statute by popular initiative in 1920. More severe and effective than the 1913 law, the initiative measure prohibited ineligible aliens from leasing land for agricultural purposes; and it plugged various other loopholes in the earlier provisions. A spirited campaign was waged to secure popular approval, a campaign with a bitter anti-Japanese flavor. All the propaganda devices then known—newspapers, speeches, films, pamphlets, leaflets, billboards, and the like—were utilized to spread the anti-Japanese poison.¹¹ The Japanese were depicted as

Porterfield v. Webb, 263 U. S. 225 (No. 28, OT 1923), p. 25, he stated:

"The fundamental question is not one of race discrimination. It is a question of recognizing the obvious fact that the American farm, with its historical associations of cultivation, environment, and including the home life of its occupants, can not exist in competition with a farm developed by Orientals with their totally different standards and ideas of cultivation of the soil, of living and social conditions.

"If the Oriental farmer is the more efficient, from the standpoint of soil production, there is just that much greater certainty of an economic conflict which it is the duty of statesmen to avoid.

"The conservative and intelligent statesmen of Japan have recognized this truth just as fully as have those of America. It is far better to have an occasional outburst from extremists who refuse to recognize the underlying reason for such legislation, than to permit of a condition that would lead to results far more serious from the standpoint of the friendly relations of the two nations."

¹¹ "In point of virulence, the 1920 agitation far exceeded any similar demonstration in California. In support of the initiative measures, the American Legion exhibited a motion picture throughout the state entitled 'Shadows of the West.' All the charges ever made against the Japanese were enacted in this film. The film showed a mysterious room fitted with wireless apparatus by which 'a head Japanese ticked out prices which controlled a state-wide vegetable market'; spies darted in and out of the scenes, Japanese were shown dumping vege-

degenerate mongrels and the voters were urged to save "California—the White Man's Paradise" from the "yellow peril," which had somewhat lapsed in the public mind since 1913. Claims were made that the birth rate of the Japanese was so high that the white people would eventually be replaced and dire warnings were made that the low standard of living of the Japanese endangered the economic and social health of the community. Opponents of the initiative measure were labeled "Jap-lovers." The fires of racial animosity were thus rekindled and the flames rose to new heights.

In a pamphlet officially mailed to all voters prior to the election, they were told that the primary purpose of the new measure was "to prohibit Orientals who cannot become American citizens from controlling our rich agricultural lands . . . Orientals, and more particularly Japanese, [have] commenced to secure control of agricultural lands in California . . ." ¹² The arguments in the pamphlet in support of the measure were repeatedly directed against the Japanese alone, without reference to other Orientals or to others who were ineligible for American citizenship. In this atmosphere heavy with race hatred, the voters gave decisive approval to the proposal, 668,483 to 222,086, though the majority constituted less than half of the total electorate. But so virulent had been the campaign and so deep had been the natural resentment in Japan that once again the threat of war appeared on the horizon, only to die in the rush of other events.

tables into the harbor to maintain high prices; two white girls were abducted by a group of Japanese men only to be rescued, at the last moment, by a squad of American Legionnaires. When meetings were called to protest the exhibition of this scurrilous film, the meetings were broken up." McWilliams, *Prejudice* (1944), p. 60.

¹² From the pamphlet, "Argument in Favor of Proposed Alien Land Law," quoted in McGovney, "The Anti-Japanese Land Laws of California and Ten Other States," 35 Calif. L. Rev. 7, 14.

It is true that the Alien Land Law, in its original and amended form, fails to mention Japanese aliens by name. Some of the proposals preceding the adoption of the original measure in 1913 had in fact made specific reference to Japanese aliens. But the expansion of the discrimination to include all aliens ineligible for citizenship did not indicate any retreat from the avowed anti-Japanese purpose. Adoption of the Congressional standard of ineligibility for citizenship was only an indirect, but no less effective, means of achieving the desired end. The federal legislation at all pertinent times has been so drawn as to exclude Japanese aliens from American citizenship.¹³ This Court has said, in referring to such legislation, that "a person of the Japanese race, if not born a citizen, is ineligible to become a citizen, i. e., to be naturalized." *Morrison v. California*, 291 U. S. 82, 85. The framers of the California law were therefore able to utilize the federal standard with full assurance that the result would be to exclude Japanese aliens from the ownership and use of farm land. Congress supplied a ready-made vehicle for discriminating against Japanese aliens, a vehicle which California was prompt to grasp and expand to purposes quite beyond the scope or object of the Congressional statute.

Moreover, there is nothing to indicate that the proponents of the California law were at any time concerned with the use or ownership of farm land by ineligible aliens other than those of Japanese origin. Among those ineligible for citizenship when the law was under con-

¹³ See 8 U. S. C. § 703, as last amended on July 2, 1946, 60 Stat. 416. This extends the right to become a naturalized citizen only to white persons, persons of African nativity or descent, persons who are descendants of races indigenous to the continents of North or South America or adjacent islands, Filipino persons, Chinese persons and persons of Chinese descent, and persons of races indigenous to India. But Chinese and Hindus were not eligible at the time the Alien Land Law was under consideration.

sideration were Chinese aliens. But the Chinese in California were generally engaged in small commercial enterprises rather than in agricultural occupations and, in addition, were not considered a menace because of the Chinese exclusion acts.¹⁴ No mention was made by the statute's proponents of the Hindus or the Malay and Polynesian aliens who were resident in California. Aliens of the latter types were so numerically insignificant as to arouse no interest or animosity.¹⁵ Only the Japanese aliens presented the real problem. It was they, the "yellow horde," who were the object of the legislation.

That fact has been further demonstrated by the subsequent enforcement of the Alien Land Law. At least 79 escheat actions have been instituted by the state since the statute became effective. Of these 79 proceedings, 4 involved Hindus, 2 involved Chinese and the remaining 73 involved Japanese.¹⁶ Curiously enough, 59 of the 73 Japanese cases were begun by the state subsequent to Pearl Harbor, during the period when the hysteria gen-

¹⁴ "The people of that state [California] did not object particularly to Chinese and Negroes, who were racially different, but who stayed in their place. But they did object to the Japanese because they were efficient, thrifty, ambitious, and, above all, unwilling to remain 'mudsillsers.'" Bailey, "California, Japan, and the Alien Land Legislation of 1913," 1 *Pac. Hist. Rev.* 36, 57.

¹⁵ The California State Board of Control collected statistics in 1920 as to city lots and farm lands occupied by Orientals, both American citizens and aliens. Of the total of 27,931,444 acres of farm land in the state, Japanese owned 74,769 acres, Chinese owned 12,076 acres and Hindus owned 2,099 acres. At the same time, Japanese held under lease or crop contract 383,287 acres, Chinese held 65,181 acres and Hindus held 86,340. There was no indication that any other aliens then ineligible for citizenship held any substantial amount of farm lands. *Report, California and the Oriental* (1920), p. 47.

¹⁶ These statistics have been compiled by the petitioner (Appendix B of brief in this Court) from the biennial reports of the California Attorney General's Office from 1912-14 through 1944-46, as supplemented by the state's brief in this case (p. 47).

erated by World War II magnified the opportunities for effective anti-Japanese propaganda.¹⁷ Vigorous enforcement of the Alien Land Law has been but one of the cruel discriminatory actions which have marked this nation's treatment since 1941 of those residents who chanced to be of Japanese origin.

The Alien Land Law, in short, was designed to effectuate a purely racial discrimination, to prohibit a Japanese alien from owning or using agricultural land solely because he is a Japanese alien. It is rooted deeply in racial, economic and social antagonisms. The question confronting us is whether such a statute, viewed against the background of racism, can mount the hurdle of the equal protection clause of the Fourteenth Amendment. Can a state disregard in this manner the historic ideal that those within the borders of this nation are not to be denied rights and privileges because they are of a particular race? I say that it cannot.

The equal protection clause is too clear to admit of any other conclusion. It provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The words "any person" have

¹⁷ In 1944 the Attorney General of California explained that the substantial non-enforcement of the law prior to World War II was "a reflection of the National policy to refrain from acts which might be regarded as unfriendly to the Japanese race and the Japanese empire." Proceedings, California Land Title Association (38th Ann. Conf. 1944), p. 97. Such was also the reason given by a California Senate Fact Finding Committee on Japanese Resettlement (Report of May 1, 1945), p. 3: "The Federal authorities since the beginning have not looked with favor upon the enforcement of the law just as they opposed its enactment in the beginning. The principal reason for this attitude seems to have been that expressed by William Jennings Bryan when, as Secretary of State, he came to California in opposition to the enactment of the law. He stated that the enactment of the law might turn a now friendly Nation into an unfriendly Nation. Undoubtedly, the attitude of the Federal authorities on this matter has been an important influence."

sufficient scope to include resident aliens, whether eligible for citizenship or not. *Yick Wo v. Hopkins*, 118 U. S. 356; *Truax v. Raich*, 239 U. S. 33. Hence Japanese aliens ineligible for citizenship must be accorded equal protection. And the laws as to which equal protection must be given certainly include those protecting the right to engage in common occupations like farming, *Yick Wo v. Hopkins, supra*, and those pertaining to the use and ownership of agricultural lands, *Buchanan v. Warley*, 245 U. S. 60. The concept of equal protection, however, may in rare cases permit a state to single out a class of persons, such as ineligible aliens, for distinctive treatment. The crucial test in these exceptional instances is whether there is a rational basis for the particular kind of discrimination involved. Are the characteristics of the class such as to provide a rational justification for the difference in treatment?

Such a rational basis is completely lacking where, as here, the discrimination stems directly from racial hatred and intolerance. The Constitution of the United States, as I read it, embodies the highest political ideals of which man is capable. It insists that our government, whether state or federal, shall respect and observe the dignity of each individual, whatever may be the name of his race, the color of his skin or the nature of his beliefs. It thus renders irrational, as a justification for discrimination, those factors which reflect racial animosity. Yet the history of the Alien Land Law shows beyond all doubt that factors of that nature make up the foundation upon which rests the discrimination established therein. And such factors are at once evident when the legal, social and economic considerations advanced in support of the discrimination are subjected to rigid scrutiny.

First. It is said that the rule established by Congress for determining those classes of aliens who may become

citizens furnishes in and of itself a reasonable basis for the discrimination involved in the Alien Land Law.

The proposition that the "plenary" power of Congress over naturalization is uninhibited, even by the constitutional prohibition of racism, is one that is open to grave doubts in my mind.¹⁸ Racism has no justifiable place whatever in our way of life, even when it appears under the guise of "plenary" power. Cf. concurring opinion in *Bridges v. Wixon*, 326 U.S. 135, 161-162. But the fact remains that Congress has made racial distinctions in establishing naturalization standards. And those distinctions in large part have grown out of the demands of racially intolerant groups, including many of those who were among the foremost proponents of the Alien Land Law. Yet it does not follow, even if we assume that Congress was justified in adopting such racial distinctions, that California can blindly adopt those distinctions for the purpose of determining who may own and enjoy agricultural land. What may be reasonable and constitutional for Congress for one purpose may not be reasonable or constitutional for a state legislature for another and wholly distinct purpose. Otherwise there would be few practical limitations to the power of a state to discriminate among those within its jurisdiction, there being a plethora of federal classifications which could be copied.¹⁹

In other words, if a state wishes to borrow a federal classification, it must seek to rationalize the adopted distinction in the new setting. Is the distinction a reason-

¹⁸ See Gordon, "The Racial Barrier to American Citizenship," 93 U. of Pa. L. Rev. 237.

¹⁹ See *Arrowsmith v. Voorhies*, 55 F. 2d 310, holding invalid a Michigan statute which prohibited "undesirable aliens," as defined by the laws of the United States, from establishing or maintaining legal residence in that state or from securing employment in that state. See also *Hines v. Davidowitz*, 312 U.S. 52.

able one for the purposes for which the state desires to use it? To that question it is no answer that the distinction was taken from a federal statute or that the distinction may be rationalized for the purpose for which Congress used it. The state's use of the distinction must stand or fall on its own merits. And if it appears that the equal protection clause forbids the state from using the distinction for the desired purpose, the fact that Congress is free to adopt the distinction in some other connection gives the state no additional power to act upon it. Thus the state acquires no power whatever to impose racial discriminations upon resident aliens from the Congressional power to exclude some or all aliens on a racial basis.

Second. It is said that eligibility for American citizenship is inherently related to loyal allegiance and desire to work for the success and welfare of the state, which has a vital interest in the farm lands within its borders. Hence it may limit the ownership and use of farms to those who are or who may become citizens.

Such a claim is outlawed by reality. In 1940 there were 4,741,971 aliens residing in the continental United States, of whom 48,158 were ineligible for naturalization.²⁰ Many of these ineligible aliens have long been domiciled in this country. They have gone into various businesses and professions. They have established homes and reared children, who have the status of American citizens by virtue of their birth in this country. And they have entered into the social and religious fabrics of their communities. Such ineligible aliens thus have a vital interest in the economic, social, and political well-being of the states in which they reside and their loyalty has been

²⁰ Of the 48,158 aliens ineligible for naturalization, 47,305 were Japanese, 749 were Korean, 9 were Polynesian, and 95 belonged to other Asiatic groups. 16th Census of the United States: 1940, Characteristics of the Nonwhite Population, p. 2.

proved many times.²¹ The fact that they are ineligible for citizenship does not, by itself, make them incapable of forming these ties and interests. Nor does their ineligibility necessarily preclude them from possessing the loyalty and allegiance which the state rightly desires.

Loyalty and the desire to work for the welfare of the state, in short, are individual rather than group characteristics. An ineligible alien may or may not be loyal; he may or may not wish to work for the success and welfare of the state or nation. But the same can be said of an eligible alien or a natural born citizen. It is the essence of naïveté to insist that these desirable characteristics are always lacking in a racially ineligible alien, whose ineligibility may be remedied tomorrow by Congress.²² These are matters which depend upon factors far more subtle and penetrating than the prevailing naturalization standards. As this Court has said, "Loyalty is a matter of the heart and mind, not of race, creed, or color." *Ex parte Endo*, 323 U. S. 283, 302. And so racial eligibility for citizenship is an irrational basis for determining who is loyal or who desires to work for the welfare of the state.

Third. It has been said that if ineligible aliens could lease or own farms, it is within the realm of possibility that they might acquire every foot of land in California which is fit for agriculture.

²¹ There was no indication of any sabotage or other subversive activities in the period surrounding Pearl Harbor on the part of Japanese aliens long resident in this country.

²² Thus see the recent amendment to the Naturalization Act, 56 Stat. 182, 8 U. S. C. § 1001, permitting the naturalization of every person who honorably served in the armed forces of the United States during World War II without regard to what would otherwise be racial ineligibility. Presumably a Japanese alien could own or use farm land in California if he meets the requirements of this provision.

If we assume that it is wrong for ineligible aliens to own or use all the farm land in California, such a contention is statistically absurd.²³ The Japanese population in California, both citizen and alien, has increased from 41,356 (more than one-tenth of them citizens) in 1910 to 71,952 (about one-third of them citizens) in 1920 to 93,717 (about two-thirds of them citizens) in 1940. Of the total farms in California in 1920, Japanese citizens and aliens controlled 4.4%, comprising 1.2% of the total acreage. In 1930 they controlled 2.9% of the farms, or 0.6% of the acreage. And in 1940 they controlled 3.9% of the farms, or 0.7% of the acreage. Since we are concerned here only with the Japanese aliens, the percentage of the farms and acreage controlled by them is materially less than the foregoing figures. Thus the possibility of all the California farm land falling under the control of Japanese aliens is quite remote, to say the least.

Moreover, the nature of the Japanese alien segment of the California population is significant. In 1940 there were 33,569 Japanese aliens in that state, but the number is now smaller, the best estimate being about 25,000.²⁴ The 33,569 figure represents those who entered before 1924, when Congress prohibited further immigration of aliens ineligible for citizenship.²⁵ By 1940, all but 2,760 of these individuals were 35 years of age or older. More than half of them were 50 years or more in age. These age figures have risen to 43 and 58 during the past eight years and death is beginning to take a more rapid toll. Deportation, voluntary return to Japan and departure

²³ The statistics which follow are taken from the 16th Census of the United States: 1940, Characteristics of the Nonwhite Population. See also McGovney, "The Anti-Japanese Land Laws of California and Ten Other States," 35 Calif. L. Rev. 7, 15-16.

²⁴ McGovney, "The Anti-Japanese Land Laws of California and Ten Other States," 35 Calif. L. Rev. 7, 14.

²⁵ 43 Stat. 161, 8 U. S. C. § 213 (c).

to other states have also contributed to the decline. The number of these aliens decreased 42% between 1920 and 1940 and an ever-increasing loss is inevitable.

Further deductions from this declining total of Japanese aliens must be made, for our purposes, for men and women who are engaged in non-agricultural activities. In 1940 about 58% of them resided in urban centers of 2,500 population or more. Out of 23,208 alien Japanese, fourteen years of age or older, only 10,512 were reported as engaged in farming occupations. While the Alien Land Law has undoubtedly discouraged some from becoming farmers, the number who would normally be non-farmers remains relatively substantial. The farmers, actual and potential, among this declining group are numerically minute.

One other fact should be mentioned in this connection. "Many of these aged and aging Japanese aliens suffered heavy pecuniary losses incident to their evacuation during the war. Suddenly ordered to abandon their properties and their homes, many felt compelled to sell at sacrificial prices. Others lost through unfaithful custodianship of their properties during their absence. Confined to so-called relocation centers, they were cut off for nearly three years from any gainful employment. The result is that many of the well-to-do among them returned to California broken in fortune, with very few years of life left for financial recuperation."²⁰

Such is the nature of the group to whom California would deny the right to own and occupy agricultural land. These elderly individuals, who have resided in this country for at least twenty-three years and who are constantly shrinking in number, are said to constitute a menace, a "yellow peril," to the welfare of California.

²⁰ McGovney, "The Anti-Japanese Land Laws of California and Ten Other States," 85 Calif. L. Rev. 7, 16-17.

They are said to be encroaching on the agricultural interests of American citizens. They are said to threaten to take over all the rich farm land of California. They are said to be so efficient that Americans cannot compete with them. They are said to be so disloyal and so undesirous of working for the welfare of the state that they must be denied the right to earn a living by farming. The mere statement of these contentions in the context of the actual situation is enough to demonstrate their shallowness and unreality. The existence of a few thousand aging residents, possessing no racial characteristic dangerous to the legitimate interests of California, can hardly justify a racial discrimination of the type here involved.

Fourth. It is stated that Japanese aliens are so efficient in their farming operations and that their living standard is so low that American farmers cannot compete successfully with them. Their right to own and use farm lands must therefore be denied if economic conflicts are to be avoided.

That Japanese immigrants brought with them highly developed techniques of cultivation is not to be denied. In Japan they had learned to obtain the highest possible yield from each narrow strip of soil. And they possessed the willingness and ability to perform the great amount of labor necessary for intensive farming. When they came to California they put their efficient methods into operation. There they pioneered in the production of various crops and reclaimed large areas, developing some of the richest agricultural regions in the state. In performing these tasks, however, the Japanese caused no substantial displacement of American farmers. The areas which they cultivated were, for the most part, deserted or undesired by others.²⁷

²⁷ McWilliams, *Prejudice* (1944), pp. 79-80.

But eventually, the Japanese concentrated all of their agricultural efforts in the production of vegetables, small fruits and greenhouse products, experience having shown that they could not compete successfully in larger farming endeavors. Within this truck-farm sphere, the Japanese achieved a near-monopoly by their diligence and efficiency. While they had, as we have seen, an infinitesimal proportion of the total farm acreage in California, their 1941 truck crops covered 42% of the state's acreage devoted to such production.²⁸ In Los Angeles County alone, they raised 64% of the truck crops for processing and 87% of the vegetables for fresh marketing.²⁹ This concentration of effort by the Japanese, many of whom were not aliens, naturally gave strong competition to other producers and forced some of them out of the field.

The success thus achieved through diligence and efficiency, however, does not justify prohibiting the Japanese from owning or using farm lands. Free competition and the survival of the fittest are supposedly vital elements in the American economic structure. And those who are injured by the fair operation of such elements can make no legitimate objection. It would indeed be strange if efficiency in agricultural production were to be considered a rational basis for denying one the right to engage in that production. Certainly from a constitutional standpoint, superiority in efficiency and productivity has never been thought to justify discrimination.

²⁸ H. R. Rep. No. 2124, 77th Cong., 2d Sess., pp. 117-118. In 1941 the Japanese produced 90% or more of California's snap beans for marketing, spring and summer celery, peppers and strawberries; 50% to 90% of the artichokes, snap beans for canning, cauliflower, fall and winter celery, cucumbers, fall peas, spinach and tomatoes; 25% to 50% of the asparagus, cabbage, cantaloupes, carrots, lettuce, onions, and watermelons.

²⁹ *Id.*, p. 118.

Comparatively speaking, the standard of living of the Japanese immigrants may have been low at first. But they have worked to raise their standard despite such obstacles as the Alien Land Law. Like many other first-generation immigrants, the Japanese were often forced to work long hours for low pay. Yet nothing has indicated that, given a fair opportunity, they are incapable of improving their economic status. At the very least, a low standard of living is hardly a justification for a statute which operates to keep that standard low. Something more than its own bootstraps is needed to pull such a law up to the constitutional level.

Fifth. Closely knit with the foregoing are a host of other contentions which make no pretense at concealing racial bigotry and which have been used so successfully by proponents and supporters of the Alien Land Law. These relate to the alleged disloyalty, clannishness, inability to assimilate, racial inferiority and racial undesirability of the Japanese, whether citizens or aliens. The misrepresentations, half-truths and distortions which mark such contentions have been exposed many times and need not be repeated here. See dissenting opinion in *Korematsu v. United States*, 323 U. S. 214, 236-240. Suffice it to say that factors of this type form no rational basis for a statutory discrimination.

Unquestionably there were and are cultural, linguistic and racial differences between Japanese aliens and native Americans not of Japanese origin or ancestry.³⁰ The physical characteristics of the Japanese, their different customs and habits, their past connections with Japan, their unique family relationships, their Oriental religion, and their extreme efficiency all contributed to the social and economic conflicts which unfortunately developed. But the crucial mistake that was made, the mistake

³⁰ See McWilliams, *Prejudice* (1944), ch. III.

that made the attitude of many Americans one of intolerance and bigotry, was the quick assumption that these differences were all racial and unchangeable. From that mistake it was an easy step to charge that the Japanese race was undesirable and that all Japanese persons were unassimilable. And from that mistake flowed the many proposals to deal with the social and economic conflicts on a group or racial basis. It was just such a proposal that became the Alien Land Law.

Hence the basic vice, the constitutional infirmity, of the Alien Land Law is that its discrimination rests upon an unreal racial foundation. It assumes that there is some racial characteristic common to all Japanese aliens, that makes them unfit to own or use agricultural land in California. There is no such characteristic. None has even been suggested. The arguments in support of the statute make no attempt whatever to discover any true racial factor. They merely represent social and economic antagonisms which have been translated into false racial terms. As such, they cannot form the rationalization necessary to conform the statute to the requirements of the equal protection clause of the Fourteenth Amendment. Accordingly, I believe that the prior decisions of this Court giving sanction to this attempt to legalize racism should be overruled.³¹

Added to this constitutional defect, of course, is the fact that the Alien Land Law from its inception has proved an embarrassment to the United States Government. This statute has been more than a local regulation of internal affairs. It has overflowed into the realm of foreign policy; it has had direct and unfortunate consequences on this country's relations with Japan. Drawn

³¹ *Terrace v. Thompson*, 263 U. S. 197; *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313; *Frick v. Webb*, 263 U. S. 326.

on a background of racial animosity, the law was so patent in its discrimination against Japanese aliens as to cause serious antagonism in Japan, even to the point of demands for war against the United States. The situation was so fraught with danger that three Presidents of the United States were forced to intervene in an effort to prevent the Alien Land Law from coming into existence. A Secretary of State made a personal plea that the passage of the law might turn Japan into an unfriendly nation. Even after the law became effective, federal authorities feared that enforcement of its provisions might jeopardize our relations with Japan. That fear was in large part responsible for the substantial non-enforcement of the statute prior to World War II. But the very existence of the law undoubtedly has caused many in Japan to bear ill-feeling toward this country, thus making friendly relations between the two nations that much more difficult.

Moreover, this nation has recently pledged itself, through the United Nations Charter, to promote respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion. The Alien Land Law stands as a barrier to the fulfillment of that national pledge. Its inconsistency with the Charter, which has been duly ratified and adopted by the United States, is but one more reason why the statute must be condemned.

And so in origin, purpose, administration and effect, the Alien Land Law does violence to the high ideals of the Constitution of the United States and the Charter of the United Nations. It is an unhappy facsimile, a disheartening reminder, of the racial policy pursued by those forces of evil whose destruction recently necessitated a devastating war. It is racism in one of its most malignant forms. Fortunately, the majority of the inhabitants of the United

States, and the majority of those in California,²² reject racism and all of its implications. They recognize that under our Constitution all persons are entitled to the equal protection of the laws without regard to their racial ancestry. Human liberty is in too great a peril today to warrant ignoring that principle in this case. For that reason I believe that the penalty of unconstitutionality should be imposed upon the Alien Land Law.

²² On November 5, 1946, the voters of California rejected by 1,143,780 to 797,067 an attempt to "close loopholes in legislative enactments [the Alien Land Laws] based on constitutional grounds." The rejected amendment validated various additions to the Alien Land Law which had been made by the legislature to prevent circumvention of that law. U. S. Dept. of Interior, W. R. A., People in Motion: The Postwar Adjustment of the Evacuated Japanese Americans (1947), pp. 41-45.

SUPREME COURT OF THE UNITED STATES

No. 44.—OCTOBER TERM, 1947.

Fred Y. Oyama and Kajiro Oyama,
individually and as guardian of
Fred Y. Oyama, Petitioners,

v.

State of California.

On Writ of Certiorari
to the Supreme
Court of Califor-
nia.

[January 19, 1948.]

MR. JUSTICE REED, with whom MR. JUSTICE BURTON joins, dissenting.

The Court's opinion assumes *arguendo* that the California Alien Land Laws are constitutional. As we read the opinion, it holds that the Alien Land Laws of California, as here applied, discriminate in an unconstitutional manner against an American citizen—a son born in the United States to resident parents of Japanese nationality. From this holding we dissent.

California, through an exercise of the police power, which has been repeatedly approved by us,¹ has prohibited ownership of land within the state by aliens ineligible for citizenship.² Recognizing that the benefits

¹ See footnote 12 of the majority opinion.

² SEC. 1: "All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property, or any interest therein, in this state; and have in whole or in part the beneficial use thereof, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state."

SEC. 2: "All aliens other than those mentioned in section one of this act, may acquire, possess, enjoy, use, cultivate, occupy and transfer real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the manner and to the extent, and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise."

SEC. 7: "Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in Section 2 of

flowing from ownership can be enjoyed through subterfuges by persons not the holders of legal or equitable title, California has proscribed as to the state every "conveyance . . . made with intent to prevent, evade or avoid escheat . . ."³ Transfers of real property made with

this act, or by any, company, association or corporation mentioned in Section 3 of this act, shall escheat as of the date of such acquiring, to, and become and remain the property of the state of California . . ."

³ SEC. 9: "Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the state and the interest thereby conveyed or sought to be conveyed shall escheat to the state as of the date of such transfer, if the property interest involved is of such a character that an alien mentioned in Section 2 hereof is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein."

"A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:

"(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof;

"(b) The taking of the property in the name of a company, association or corporation if the memberships or shares of stock therein held by aliens mentioned in Section 2 hereof, together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a majority of the membership or issued capital stock of such company, association or corporation;

"(c) The execution of a mortgage in favor of an alien mentioned in Section 2 hereof if such mortgagee is given possession, control or management of the property.

"In each of the foregoing instances the burden of proof shall be upon the defendant to show that the conveyance was not made with intent to prevent, evade or avoid escheat.

"The enumeration in this section of certain presumptions shall not be so construed as to preclude other presumptions or inferences

this intent "shall be void as to the state and the interest thereby conveyed or sought to be conveyed shall escheat to the state as of the date of such transfer . . ." To assist in the proof of "intent to prevent, evade or avoid escheat," the state was given the benefit of a "prima facie presumption that the conveyance is made with such intent . . ." where the state proves: "The taking of the property in the name of a person other than [an alien who cannot hold land] . . . if the consideration is paid or agreed or understood to be paid by an alien [who cannot hold land] . . ." Thus the state has made void as to it, two substantive acts: (1) ownership of land by ineligible aliens and (2) transfers made to avoid by indirection the prohibition against ownership of land by ineligible aliens. The statutory scheme recognizes that the purpose of the Alien Land Laws cannot be achieved unless attempts to avoid the basic prohibition of the law are penalized. Any law aimed at the prevention of ownership by ineligible aliens, which did not penalize both the act of owning and the act of attempting to enjoy the rights of ownership through a cloak, would be defective and readily avoided.

The trial court found that the transfers challenged by California in this case were made with an "intent to prevent, evade or avoid escheat"; in so finding the court considered the statutory presumption together with the other evidence detailed in the Court's opinion and concluded that the defendants had not met the statutory

that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein."

Presumption (a) has not been challenged on due process grounds. Such an attack would be futile as there is a "rational connection between the fact[s] proved and the ultimate fact presumed." *Tot v. United States*, 319 U. S. 463, 467. In *Cockrill v. California*, 268 U. S. 258, this Court held that presumption (a) did not violate due process.

burden of proof imposed by § 9. The Supreme Court of California affirmed.

We do not have in this review a balancing of constitutional rights; on one hand, the right of California to exclude ineligible aliens from land ownership and, on the other, the right of their citizen sons to hold land. California does not deny the right to own land in California to a citizen son of an ineligible alien. If that citizen obtains the land in any way not made void as a violation of law, he may hold it. Under § 9 the land escheats because of the father's violation of law before it reaches the son. The denial to the father by California of the privilege of land ownership is not challenged. Neither is the right to protect that denial by an escheat of the land on the father's attempt to avoid the limitations of the California land law. Actually, the only problem is whether the presumption arising from the payment of money for land by the ineligible father denies equal protection of the law to the son. We understand the majority opinion to hold that presumption (a) of § 9, with its so-called ancillary inferences because of the son's minority and the father's failure to file guardianship reports or testify, as here applied, discriminates unconstitutionally against Fred Oyama. If that presumption, with the inferences, had been held constitutional, apparently the Court would have affirmed the opinion below because the issue then remaining would have been the correctness of the findings of fact by the trial judge. No one would suggest that the correctness of those findings could be challenged here; the resolution of disputed issues of fact in non-constitutional matters is for the state judicial system. This Court does not intimate that it disagrees with California's factual conclusion. Its ruling is based on the "cumulative effect" of the "statutory presumption" and "two ancillary inferences." On remand to the courts of California, the case

may be tried again. On that retrial all of the evidence admitted at the first trial may be submitted to the triers of fact for no one says that the items of evidence, including the father's payment of consideration, introduced by the state are inadmissible. A major vice of the state's application of the law apparently was the reliance upon a presumption and inferences that this Court holds deny equal protection. If an intent to "prevent, evade or avoid escheat" is found on the same evidence, an escheat will again take place.

Presumption (a) of § 9 has been construed by the California Supreme Court: "That if the consideration for the purchase of the real property is paid by an ineligible alien and the title is taken in the name of a third person, it will be presumed, in the absence of other evidence to the contrary, that it was the intent of both, the alien and the grantee to 'prevent, evade or avoid' the escheat at law But the presumption is recognized as disputable and as disappearing in the face of contrary evidence of sufficient strength to meet our rule on conflict of testimony."⁴ We do not interpret the opinion of our Brethren to say that the presumption, if valid, is irrebuttable; or, to put the matter differently, that the effect of the presumption, if valid, is to make it inevitable that all gifts of real property by an alien-Japanese father to his child can be successfully escheated by the state. As the cases prove, an alien-Japanese father can give California lands to his son in spite of the presumption.⁵ The effect of the presumption, if valid, is rather to place a burden,

⁴ *People v. Fujita*, 215 Calif. 166, 170-71; see *Takeuchi v. Schmuck*, 206 Calif. 782. Indeed, a holding that this presumption was conclusive might open it to a serious attack based upon due process grounds. See *Hainer v. Donnan*, 285 U. S. 312.

⁵ *People v. Fujita*, 215 Calif. 166; see *Estate of Yano*, 188 Calif. 645.

an "onerous burden" to adopt the phrase of the majority opinion, upon all grantees who take land under those conditions set forth in § 9.

The issue in this case, therefore, is neither the validity of the California prohibition against the ownership of agricultural land by a person ineligible to become an American citizen, nor the validity of a law, § 9, that an attempt to evade that prohibition shall be penalized by escheat. The validity of both of these provisions is unchallenged by this Court's opinion: The issue here is the validity of the presumption that when an ineligible person pays the consideration for land conveyed to an eligible person, there is a *prima facie* presumption that the conveyance is made to avoid the prohibited ownership. The essence of the argument in the opinion is this: When an alien-English father purchases land from a third party and puts title in his child, acceptance by the child and delivery of the deed are presumed; however, if an alien-Japanese father engages in the same transaction, his child must meet the "onerous burden" of the presumption; therefore, Fred Johnson and Fred Oyama are not treated equally by the laws of California and Fred Oyama is denied equal protection by those laws. These facts are accurate; the flaw is that the conclusion does not follow. California has, as against the state, made illegal a particular class of transactions: transfers made with the intent to evade escheat of lands. Anyone, no matter what his racial origin may be, who as a grantee is a party to a sale of land which the state attacks as being within the proscribed class must overcome the presumption of § 9 to establish the legality of the transfer. This presumption operates with a mechanical impartiality. Whoever the grantee in a transfer questioned by the state is, be he Fred Johnson or Fred Oyama, he must bear the "onerous burden"; he must bear it not because of

descent or nationality but because he has been a party to a transaction which the state challenges as illegal under an admittedly valid law.

As we see the Court's argument, it focuses attention upon what it contends are two parallel situations: the gift of an English father to a citizen son and the gift of a Japanese father to a citizen son. Upon examination of the relevant state laws, it concludes that the son of the Japanese father is placed in a position less advantageous than that of the son of an English father. That is so, but for our purposes it is the reason for the result, and not the result itself, that is important. The legal positions of the two sons are different only because the situations are not parallel. The Japanese father and his citizen son are parties to an illegal transaction if the land was transferred with the "intent to prevent, evade or avoid escheat"; as an English father is not prevented from holding real property, his gift cannot be challenged on that ground by the state. The capacities of the donors are different and it is this difference, and nothing else, which raises in one case and fails to raise in the other, the presumption complained of by Oyama.* It is not a

* *Mobile, J. & K. C. R. Co. v. Turnipseed*, 219 U. S. 35, 42-43:

"Legislation providing that proof of one fact shall constitute *prima facie* evidence of the main fact in issue is but to enact a rule of evidence, and quite within the general power of government. Statutes, National and state, dealing with such methods of proof in both civil and criminal cases abound, and the decisions upholding them are numerous

"That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal protection of the law it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of

denial of equal protection for a state to classify transactions readily leading to law evasions differently from those without such a possibility. Such classification is permissible.

Let us test the Court's reasoning by applying it to a different set of facts. For purposes of illustration, we put these cases: (1) a solvent father purchases land from a third party and puts the title in his son; and (2) an insolvent father purchases land from a third party and puts the title in his son. In example (2), the creditors of the father in an action against the son to subject the land to the satisfaction of their claims against the father, can raise a *prima facie* presumption that the transfer was fraudulent as to them by proving that the transaction took place during the period of the father's insolvency.¹ Here the son of the insolvent father bears an "onerous burden" to which the son of a solvent father is not subjected; he bears this burden because he has been a party to a transaction which creditors challenge as voidable. The disability of the father taints the son's right and, therefore, he is placed in a position less advantageous than that of the son of a solvent father. Would it be evidence, operate to preclude the party from the right to present his defense to the main fact thus presumed?

¹ *Seaboard Air Line R. Co. v. Watson*, 287 U. S. 88, 90; *Bandini Co. v. Superior Court*, 284 U. S. 8, 18-19; *United States ex rel. St. Louis S. R. Co. v. I. C. C.*, 264 U. S. 64, 77.

² *Bailey v. Blackmon*, 3 F. 2d 252, 253, aff'd on rehearing, 14 F. 2d 16; *Hedrick v. Hockfield*, 283 F. 574, 576-77; *Ryan v. Wohl, South & Co.*, 241 Ala. 123, 124-45; *Judson v. Lyford*, 84 Calif. 505, 509; *Schwartz v. Hazlett*, 8 Calif. 118, 128; *Chrisman v. Greer*, 239 Ky. 378, 380; *Pruyn v. Young*, 51 La. Ann. 320, 322; *Lusk v. Riggs*, 65 Neb. 258, 261; *Grambling, Spalding & Co. v. Dickey*, 118 N. C. 986, 988; *Willamette Grocery Co. v. Skiff*, 118 Ore. 685, 689.

This analogy is exact because in most jurisdictions the fact of a blood relationship alone raises no presumption of fraud. *Gottlieb v. Thatcher*, 151 U. S. 271, 279; *Gray v. Galpin*, 98 Calif. 633, 635. See cases collected in 27 C. J. 827, note 99; 37 C. J. S. 1084, note 9.

reasonable to say that the son of the insolvent father has been denied "equal protection" and, consequently, the presumption is unconstitutional? No one would so contend. The inequality between the sons of eligible and ineligible landowners does not seem to us to differ.

As we understand petitioners' argument in briefs and before this Court, the petitioners in their discussion of the denial of equal protection to the citizen son depended solely upon the invalidity of the presumption arising from the payment of the money by the father. This Court's opinion recognizes that petitioners' argument includes discrimination, amounting to a lack of equal protection, arising (1) from the requirement of § 9 that the son must take the burden of proving affirmatively the bona fides of the gift from the father; (2) because the gift to the infant son of a Japanese is presumed invalid while the gift to an infant son of an eligible alien is presumed valid; (3) because the Court took into consideration the father's omission to file guardian reports after the transfer. Normally, the Court says, a guardian's subsequent improper conduct would not affect the validity of a gift to a child. Because of what is deemed additional burdens thus placed upon the son, the Court concludes that:

"The cumulative effect, we believe, was clearly to discriminate against Fred Oyama."

"The only basis for this discrimination against an American citizen, moreover, was the fact that his father was Japanese and not American, Russian, Chinese or English."

These discriminations, if such they are, seem to us mere elaborations of the central theory that the challenged presumption of § 9 is unconstitutional as a denial of equal protection. It is of course true that the son of a citizen of Japan cannot receive a gift from an ineligible father

as readily as a son of an alien entitled to naturalization but again such a classification is entirely reasonable when we once assume that the State of California has a right to prohibit the ownership of California land directly or indirectly by a Japanese.

Discrimination in the sense of placing more burdens upon some than upon others is not in itself unconstitutional. If all types of discrimination were unconstitutional, our society would be incapable of legislation upon many important and vital questions. All reasonable classification puts its subjects into different categories where they may have advantages or disadvantages that flow from their positions. The grouping of all those who take land as grantees, in a transaction in which an ineligible alien pays the consideration, in a class subject to the statutory presumption of § 9 and other inferences which are reasonably related to the transfer, should not be struck down as unconstitutional. Unless the California Land Laws are to be held unconstitutional, we think the presumption and its resulting effects must be accepted as legal.

* *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 78-79:

"The rules by which this contention must be tested, as is shown by repeated decisions of this court, are these: 1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality: 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

Finley v. California, 222 U. S. 28.

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nia.

[January 19, 1948.]

MR. JUSTICE JACKSON, dissenting.

I am unable to see how this Court logically can set aside this judgment unless it is prepared to invalidate the California Alien Land Laws, on which it is based. If this judgment of escheat seems harsh as to the Oyamas, it is only because it faithfully carries out a legislative policy, the validity of which this Court does not question.

The State's argument is as simple as this: If California has power to forbid certain aliens to own its lands, it must have incidental power to prevent evasion of that prohibition by use of an infant's name to cloak a forbidden ownership. If it has the right to protect itself against such evasion, its courts must have the right to decide the question of fact whether a given transaction constitutes an evasion. And if its courts have to apply the Act, the State has power to aid them by creating reasonable presumptions. I cannot find that this reasoning is defective or that it fails to support the judgment below, however little I like the result.

In this case the elder Oyama arranged to acquire some six acres of agricultural lands. He could not take title in his own name because of his classification as an ineligible alien, and hence one forbidden to acquire such lands. Title was taken in the name of Fred, his son. When this was happening Fred was six years old. He had no funds

and the entire consideration was paid by the father. We can hardly criticize the state court for concluding, especially in absence of any proof to the contrary, that a 6-year-old child did not decide for himself to go into agriculture, or that these particular lands would be suitable for him if he did. The lands would require continuous cultivation if they were not to revert to a state of nature and it was not unreasonable to doubt that the 6-year-old son could supply either the manual labor or the oversight necessary to preserve the investment or to make it yield a return. Moreover, the return from the lands, even if applied to the support of young Oyama, operated to reduce the parental obligation. In short, there is no proof that this 6-year-old child contributed to the purchase of these lands either funds, judgment or desire. The California court considered that his name was used in the transaction without the infant's understanding consent. Even if there were no presumption created by statute, I should find it difficult to say that this conclusion is an unreasonable one.

Nor do I think we could say that it would offend the Federal Constitution if the State, to make admittedly constitutional legislation effective, should go so far as to create a presumption that where the consideration is paid by an ineligible father and the title is taken in the name of his infant son, it is to be deemed the father's purchase. I do not understand the Court to say that this is a far-fetched or unreasonable inference from such facts. It seems to say, however, that a presumption, which it construes in this way, is invalid because it operates only against sons of persons ineligible for citizenship. If even such a presumption strikes only a limited class, it is because the basic prohibitions of the Act strike only a limited class. If the State can validly classify certain Asiatics as a separate class for exclusion from land ownership, I do not see why it could not do so for purposes of a presumption.

But the California statute has not made a presumption applicable only against sons of the excluded Asiatics. The statutory presumption, so far as it applies here, is cast in this language:

"A *prima facie* presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:

"(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof [the excluded alien] if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof"

The same presumption would be raised by the statute against any American citizen or any alien or any person whatsoever if he received the title and any ineligible alien paid the consideration. The Court's decision is that the presumption denies Fred Oyama the equal protection of the laws because grantees are treated differently if they are sons of ineligible aliens than if they are the sons of others. This Act makes no such classification. The presumption does not apply to him because he is the son of an ineligible father—it applies because he is a grantee of lands paid for by an ineligible alien. The Court itself reads this father and son classification into the Act, quite unjustified by its words. It is true that in this case the relationship of father and son also exists, but that is not the relationship that calls the presumption into operation.

The Act classifies grantees only as those whose lands have been paid for by an ineligible alien and those whose lands have not. Every member of the class whose lands have been paid for by such an alien must overcome the presumption. Every grantee similarly situated is saddled by the identical burden imposed on Fred Oyama whether he is the son of a Japanese, the son of an American citizen or the son of an eligible alien. Thus there is no discrim-

ination apparent on its face in the provision of the statute which the Court strikes down.

But it is said that a discrimination is latent in this presumption from the fact that other fathers may give land to their sons and no presumption would apply. That there is a discrimination in this situation no one will deny; it is the fundamental one, which the Court does not touch, by which the elder Oyama could not, directly or indirectly, acquire this land while many other fathers could. The presumption, of course, would not apply if the consideration were paid by a person to whom the statute does not apply. But Fred Oyama, the son, is in no different position as to the presumption than the son of any other person whatsoever. If a citizen's son received this land from Oyama, Senior under the same conditions, he would be confronted with the same presumption and escheat. If the Oyama lad, on the other hand, received this land from a citizen, he would take it as free of presumption and escheat as any California lad could do. The only discrimination which prejudices young Oyama is the one which makes his father ineligible to own land or be a donor of it. That discrimination is passed by as valid, and one that seems to me wholly fictitious is first erected by this Court and then struck down.

I do not find anything in the Federal Constitution which authorizes us to strip a State of its power to enact reasonable presumptions which put the burden of producing evidence upon the only person who possesses it. This presumption is not made conclusive and the California courts have sometimes held it to be overcome by evidence. In this case, if there is any explanation of this transaction other than that Oyama used his son's name to acquire beneficial interests for himself which he was forbidden to acquire in name, no one knows those facts better than the senior Oyama. He did not take the witness stand. He left unrebuted both the presump-

tion of the statute and the inference that most reasonable persons, even in the absence of a statute, would draw from the facts.

This Court also says that California used the default of the father, in failing to file accountings as trustee for the infant, as evidence against the infant and seems to imply this was an unconstitutional procedure. As we have seen, this infant was of such tender years that he had neither ideas nor will nor understanding about the purchase. The only person's intention which would stamp this transaction as one in good faith or as an evasion of the statute was the intention of the father. He was the only actor; he gave the land to the son and accepted on his behalf, so we are told. Certainly it was competent for the California courts, as bearing on his intentions and good faith, to receive evidence of the fact that the sole actor did not consider himself under an obligation to account as the law would require him to do if the property really belonged to an infant and he were a trustee.

While I think that California has pursued a policy of unnecessary severity by which the Oyamas lose both land and investment, I do not see how this Court, while conceding the State's right to keep the policy on its books, can strip the State of the right to make its Act effective. What we seem to be holding is that while the State has power to exclude the alien from land ownership, the alien has the constitutional right to nullify the policy by a device we would be prompt to condemn if it were used to evade a federal statute.

A majority of the Court agrees that the ground assigned by the Court's opinion is sufficient to decide this litigation. It does not therefore seem necessary or helpful to enter into a discussion of the constitutionality of the Alien Land Laws themselves.

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TRADE MARK  21

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